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No. _____

In The

Supreme Court of the United States

October Term, 1992

DEXTER ELLERBEE,

Petitioner,

v.

DEXTER MILLS.

Respondent.

Petition For A Writ Of Certiorari To The Supreme Court Of Georgia

PETITION FOR A WRIT OF CERTIORARI

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140 pp

QUESTIONS PRESENTED FOR REVIEW

I

Whether a principal of a public high school is a public official who, before recovering damages for defamation, must prove that statements made about his job performance were made with actual malice.

II

Whether a statement which is of public importance and is determined to be knowingly and recklessly false, but does not produce any harmful effects, is protected by the First Amendment.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Dexter Ellerbee respectfully petitions for a writ of certiorari to review the decision of the Supreme Court of Georgia.

OPINION BELOW

The opinion of the Supreme Court of Georgia is reported at 262 Ga. 516, 422 S.E.2d 539 (1992), and reprinted at Petition Appendix I.

JURISDICTION

The Supreme Court of Georgia entered judgment on November 16, 1992. This Court has jurisdiction under 28 U.S.C. 1255.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First Amendment to the United States Constitution which provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the Government for a redress of grievances.

and the Fourteenth Amendment to the United States Constitution which provides, in pertinent part:

> . . . no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This case involves a public school teacher who criticized the job performance of a public high school principal and was sued by the principal for defamation. The Supreme Court of Georgia affirmed the ruling of the trial

court in finding that as a matter of law, a public school principal was not a public official and under the facts of this case, was not a public figure who must prove that statements about his job performance were made with actual malice. Petitioner respectfully petitions this Court for a review of that ruling.

A. COURSE OF THE PROCEEDINGS BELOW

On January 27, 1989, Respondent filed this action in the State Court of Cobb County, Georgia, claiming Dexter Ellerbee, a former teacher, defamed his character through statements made about Mills' job performance as North Cobb High School's Principal. This case was subsequently transferred to the Superior Court of Cobb County. Petitioner Ellerbee filed a Motion For Summary Judgment and raised in the first instance, that Mills was either a public official or public figure who could only recover for slander and libel by showing malice on the part of the declarant. The trial court denied Petitioner's motion for summary judgment on March 20, 1991, but did not specify the reasons for the denial.[1]

At the outset of the trial of the action on May 20, 1992, Petitioner again argued that Mills should be deemed a public official or a public figure. The trial court denied Petitioner's motion. At the conclusion of the trial, on motion for directed verdict, the Petitioner argued the public official/public figure standard and stated that

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[1] The trial court's order of March 20, 1991, denying Petitioner's motion for summary judgment is attached as Appendix II.

Plaintiff failed to prove that the statements made by the Petitioner were made with actual malice. The motion for directed verdict was denied. Further, the Court refused to charge the jury that Mills was a public official or public figure who had to establish malice before recovering damages.[2] Pet. App. 56.

This case was tried before a jury on May 20, 1991, with the trial concluding on May 24, 1991. Initially, the jury rendered a verdict in favor of the Plaintiff for Zero Dollars ($0.00) for nominal damages, Zero Dollars ($0.00) for compensatory damages, Twenty-Six Thousand, Nine Hundred and Twenty Dollars ($26,920.00) for punitive damages and Twenty-Six Thousand, Nine Hundred and Twenty Dollars ($26,920.00) for attorney's fees, with costs to be taxed against the Defendant. Pet. App. 57. At that time, the trial court found that the punitive damage award could not be supported because there was no award by the jury of either compensatory or nominal damages. *Id.* at 57-58. As a result, the trial court issued a curative instruction to the jury which then returned with a verdict in favor of the Plaintiff for One Dollar ($1.00) for nominal damages, One Dollar ($1.00) for compensatory damages, Twenty-Six Thousand, Nine Hundred and Twenty Dollars ($26,920.00) for punitive damages and Twenty-Six Thousand, Nine Hundred and Twenty Dollars ($26,920.00) for attorney's fees. Pet. App. 59-60. The trial

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[2] The relevant portions of the trial transcript are attached as Appendix III and the relevant trial exhibits are attached as Appendix IV.

court entered a judgment on the verdict on May 30, 1991.[3] Pet App. 104.

On July 1, 1991, the trial court held a hearing regarding Respondent's prayer that a permanent injunction be issued against the Petitioner. After oral argument was presented, the Superior Court of Cobb County issued a permanent injunction barring Petitioner from making twenty-seven (27) enumerated statements.

On or about July 1, 1991, Petitioner filed a motion for judgment notwithstanding the verdict or, in the alternative, for a new trial. Petitioner raised the issue that Respondent was a public official or a public figure and that the trial court had erred in holding him to be a private individual. The trial court denied Petitioner's motion on November 7, 1991.[4] Pet. App. 106.

Petitioner appealed the denial of the motion for new trial and the grant of the injunction as companion cases to the Supreme Court of Georgia. The Supreme Court of Georgia rendered its decision on November 16, 1992, affirming the trial court's entry of judgment on the award of damages, but reversing the grant of the injunction. The majority of the court held that as a matter of law, a public school principal is not a public official and under the facts of this case, Mills is not a public figure nor a limited purpose public figure as defined by *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 344 (1984). Pet. App. 1-4.

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[3] The judgment entered on May 30, 1991, is attached as Appendix V.

[4] The trial court's order of November 7, 1991, denying Petitioner's motion is attached as Appendix VI.

Justice Fletcher, who specially concurred in the judgment, found that a public school principal is a public official under defamation law. Pet. App. 5. Justice Fletcher stated without explanation, however, that Petitioner had acted with actual malice and, thus, concurred with the majority in the affirmance of the award of damages. *Id.* at 10. Similarly, Justice Fletcher concurred that under the facts of this case, Mills is not a public figure. *Id.* at 9.

The Supreme Court of Georgia unanimously held that the injunction was drawn too broadly and thus it was overturned. *Id.* at 4.

B. STATEMENT OF THE FACTS

Petitioner, Dexter Ellerbee, was a teacher at North Cobb High School, a public high school serving the Cobb County School District in the State of Georgia, between the years of 1986 and 1987. Respondent, Dexter Mills, was Principal at North Cobb High School between June 1985 through June 1990. Part of Dexter Mill's duties as a high school principal, included hiring and firing of teachers and staff, implementing curriculum, supervision of all educational programs, including academic programs, public relations programs and extra curriculum programs. Pet. App. 17-18.

Several newspaper articles have been published about the different programs at North Cobb High School while Respondent was Principal. Further, Mills has been quoted in the media about matters which North Cobb High School received media attention. Recently, Mills was

quoted and pictured in a major metropolitan newspaper surveying his new high school, Carl Harrison High School. Pet. App. 50, 51, 93-95.

Mills is an expert in matters involving school administration and as a result, has held consulting positions with St. Charles Parish in Louisiana, Auburn University at Montgomery, Georgia State University, Kennesaw State College, Harvard University Graduate School, and Rabun Gap Nacotchee School. Pet. App. 38-50.

Mills has been a member of the advisory board for the Principal Center, an organization at Harvard University. This organization networks principals from all over the country to exchange information about developments in education in other places of the country. Also at Harvard, Mills served as a member of the Faculty Institute Staff which is comprised of elementary, middle school and high school principals from across the nation and from several foreign countries. *Id.*

Mills has spoken to the Kennesaw Business Association, the North Cobb Rotary Club, and the Acworth Optimist Club about North Cobb High School. He has also spoken in the Graduate School of Educational Administration at Georgia State University on educational issues. *Id.*

At Kennesaw State College, Mills served as Speaker at the Assistant Principals Institute which relates to the role of the assistant principal as it relates to the principalship. *Id.*

Mills is, or was, a member of the American Alliance of Health, Physical Education, Recreation and Dance; The Georgia Association For Health, Physical Education, Recreation and Dance; The National Education Association; The Georgia Association Of Educators; The American Federation Of Teachers; and The Georgia Federation Of Teachers. He was President of the Georgia Association Of Health, Physical Education, Recreation And Dance for one (1) year. He was on the National Committee with the American Alliance For Health, Physical Education, Recreation And Dance and had a seat on the Physical Education Public Information Committee. He has been a member of the Cobb County Administrative Association, and a member of The Georgia Association Of Secondary School Principals, for which he is a Membership Chairperson for the Seventh Congressional District. He is also a member of The National Association Of Secondary School Principals, for which he serves as Southeast Regional Representative on the Committee for Urban Schools. He is one of seventy-five (75) persons nationwide who serve on that committee. Pet. App. 42-54.

Mills is a member of the North Cobb Rotary Club and, in the past, has served as its President. Mills has served as the Cobb Rotary Council President since November 16, 1989. *Id.* at 38-42.

Mills is well known in the North Cobb community not only in his capacity as Principal, but also because of his participation in instructional workshops, business and fraternal organizations and as a result of his expertise in school administration. Mills admits that a public high school principal is a position of high visibility in the school and the community. *Id.* at 50.

All of Petitioner's statements and proposals which were the subject of the underlying lawsuit, were directed at Mills' administration, Mills' qualifications and fitness for office, his official conduct, and the policies of his school and its general operation.

For example, one of the Petitioner's proposals for improvement at North Cobb High School stated in part:

> (1) "many students with special education needs have been misplaced *intentionally* by the administration; parents have tried to address these concerns, but their pleas have fallen on deaf ears;
>
> (2) all educational programs or courses offered need to be supported by the administration;
>
> (3) stronger actions need to be taken against students that violate school policies;
>
> (4) evaluations and assessments need to be done fairly; and
>
> (5) the principal and the administration need to be moral examples in the school and the community."

Pet. App. 70-72. Mills' positions as a high school principal is a highly visible position in the school and in the community. His actions and the decisions he makes as principal greatly influence the student body and the North Cobb Community. The general public is also interested in what happens in the public high school, specifically because a principal is paid by the county and state from taxpayer generated funds. Pet. App. 29.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. THE SUPREME COURT OF GEORGIA HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN SETTLED, BUT SHOULD BE SETTLED BY THIS COURT.

Mr. Ellerbee contends that the designation of a public official should extend to a public school principal for purposes of defamation law. In support of this contention, Ellerbee argues that the United States Supreme Court's opinions in *New York Times v. Sullivan,* 376 U.S. 254 (1964) and *Rosenblatt v. Baer,* 383 U.S. 75 (1966), provide the basis for the designation of a public school principal as a public official. The Supreme Court of Georgia has decided as a matter of law, that no public school principals are public officials. Therefore, the Supreme Court of Georgia has decided an important question of federal law which has not been settled, but should be settled by this Court.

In *New York Times v. Sullivan,* 376 U.S. 254 (1964), this Court held that the First Amendment guarantees of freedom of speech and of the press as applied to the states by the Fourteenth Amendment, require a public official in a libel action brought against critics of his official conduct to prove that the defamatory statement was made with "actual malice."[5] Actual malice has been defined as a statement made "with knowledge that it was false or with

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[5] "Congress shall make no law . . . abridging the freedom of speech or of the press . . . " Constitution of the United States, Amendment I.

reckless disregard of whether it was false or not." *New York Times*, 376 U.S. at 280.[6]

In *Rosenblatt v. Baer*, 383 U.S. 75 (1966), the United States Supreme Court extended the designation of public official to a superintendent of a county ski resort appointed to that office and employed by and responsible to the county commissioner. In *Rosenblatt*, the United States Supreme Court held that:

> the public official designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs.
>
> . . . where a position in government has such apparent importance that the public has an independent interest in the qualifications and the performances of the person who holds it, beyond the general public interest in the qualifications and performance of all governmental employees, . . . the *New York Times* malice standards apply.

Rosenblatt, 383 U.S. at 85-86. This Court has held that the *New York Times* rule is not limited to elected public officials. *Henry v. Collins*, 380 U.S. 356 (1965) and *Rosenblatt*, 383 U.S. at 90. It includes anyone engaged in activity relating to matters of public interest or public concern, particularly if connected with government. However, no United States Supreme Court case has specifically held which persons holding positions of responsibility in the

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[6] Proof of actual malice must be shown with "convincing clarity". *New York Times v. Sullivan*, 376 U.S. at 285-86.

public educational system are public officials. It could be argued, however, that the Court has, by implication, extended the designation of public official to members of the board of education.

In *Pickering v. Board of Education,* 391 U.S. 563 (1967), the United States Supreme Court held that the state's power to afford the *board of education,* or *its members,* a legal right to sue a teacher who made false statements about the school's administration is governed by the *New York Times* malice standard. Specifically, the Court held that the teacher's statements, although erroneous, were not knowingly or recklessly false. Further, absent proof that the false statements were made knowingly or recklessly, his right to speak on issues of public concern may not furnish the basis for the teacher's dismissal from public employment. *Id.* at 574.[7]

Although the United States Supreme Court in *Pickering* pointed out that the availability of damage awards in libel suits and the validity of a dismissal from employment in teacher dismissal suits, have a slightly different impact on the right to freedom of speech, the *Pickering* case extended by implication, the "public official" designation to the members of board of education. Thus, the board members would be held to a higher standard of proof.[8]

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[7] Therefore, a teacher was accorded First Amendment protection where he had made erroneous public statements upon issues which were the subject of public attention and which were critical of his employer.

[8] *See, Long v. Egnor,* 346 S.E.2d 778 (1986) (elected members of county board of education held to be public officials).

The United States Supreme Court has had a historic dedication to public education. *San Antonio District v. Rodriguez,* 411 U.S. 1, 30 (1972). Moreover, this Court has recognized that public schools are the nation's most important institution in preserving societal values and preparing individuals to participate as citizens. *Ambach v. Norwick* 441 U.S. 68, 76-77 (1979). In *Brown v. Board of Education,* 347 U.S. 483 (1954), a unanimous Court recognized that "education is perhaps the most important function of a state and local government." *Id.* at 493. In the context of racial discrimination, the Court observed that "compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education towards a democratic society." *Id.* In *Ambach v. Norwick,* 441 U.S. 68 (1979), the United States Supreme Court held that a state may exclude aliens from teaching positions in the nation's public schools. The rationale of the Court was that "public school teachers may be regarded as performing a task 'that go[es] to the heart of representative government.' " *Id.* at 75-76, *quoting, Sugarman v. Dougall,* 413 U.S. 634, 647 (1973).

Thus, this Court has already noted that public school teachers hold positions of responsibility in government. Even more visible than the public school teacher is a public school principal, who is unquestionably the most central figure in our public schools. A public school principal is a "key governmental employee responsible for implementing the state's 'primary obligation' to provide 'an adequate public education for its citizens.' " GA. CONST., art. VIII, sec. I, para. I (1983), *quoting* from *Ellerbee,* 262 Ga. App. 516, 422 S.E.2d at 542 (1992). *See,*

also, O.C.G.A. § 20-2-130, *et seq.*, *Georgia Qualified Basic Education Act*. As chief administrative officer, a public school principal exercises broad discretionary power, implements curriculum, supervises all educational programs, is in charge of hiring and firing of all teachers and staff, expends public funds, and formulates public policies for teachers, students and parents. The critical role that principals play in public education is illustrated by the state statutory provisions outlining their responsibilities.[9]

In *Bernal v. Fainter, Secretary of State of Texas, et al.*, 766 U.S. 216 (1983), a case brought under the Equal Protection Clause, the United States Supreme Court recognized the important difference between persons occupying policy making roles and those occupying ministerial and/or clerical roles. Specifically, the Court held that:

> The focus of the inquiry is whether the position is such that the office holder will necessarily exercise broad discretionary power over the formation or execution of public policies importantly affecting the citizen population . . .

Id. at 218, n. 4. By analyzing the actual responsibilities of the office holder, the Supreme Court has recognized the important difference between persons vested with policy making decisions and those vested with ministerial

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[9] For example, the Georgia Code requires that a student's and/or teacher's criminal acts be reported by the principal to the school system superintendent, that the principal be accountable for the expenditure of public funds, that he exercise control over the school grounds and buildings, and that he be present when corporal punishment is being administered. O.C.G.A. §§ 20-2-731(3), 20-2-795, 20-2-960(a), 20-2-1180(a) and 20-2-1184(a).

duties. A public school principal occupies a policy making role and thus, should be deemed a public official.

To extend the designation of public official to a high school principal would not exaggerate the designation beyond its original intendment as enunciated in *New York Times* and *Rosenblatt*. A principal of a public school, who fulfills perhaps the state's most important governmental function, should be deemed sufficiently high in the hierarchy of government, so as to be designated a public official for purposes of defamation law. *Rosenblatt*, U.S. at 85, 86. Furthermore, the public at large has an interest in a public school's principal and his qualifications for that office. *See, Monitor Patriot Co. v. Roy*, 401 U.S. 265 (1971). Accordingly, this issue falls squarely within the standards set forth in *New York Times* and *Rosenblatt*. A principal of a public school employed by and responsible to the county board of education and the state, is no less a public official than a supervisor of a county ski resort employed by and responsible to the county commissioners. See, Pet. App. 29.

In *Lorain Journal Co., et al. v. Milkovich*, 15 Ohio St. 3d 292, 473 N.E.2d 1191 (1984), *cert. denied*, 474 U.S. 953 (1985), Justice Brennan and Justice Marshall dissented to the Court's denial of certiorari. *Milkovich* dealt with a teacher/coach who sued a columnist as a result of a publication that criticized Milkovich for his performance and conduct at a high school wrestling match in which he was alleged to have encouraged a brawl between the two competing high schools. The Supreme Court of Ohio concluded that Milkovich was neither a public official nor a public figure and that if the article contained facts which

were false, they were not protected by the First Amendment. *Id.* at 294-297, 473 N.E.2d at 1193-1196.

In their dissent, Justices Brennan and Marshall stated that a public school teacher falls squarely within the rules of *New York Times* and *Rosenblatt*. "Indeed, the status of a public school teacher as a 'public official' for purposes of applying the *New York Times* rule follows a *fortiori* from the reasoning of the Court in *Rosenblatt*." *Milkovich*, 474 U.S. at 958. Petitioner avers, that the classification of a public school principal as a public official is even more compelling than the classification of a public school teacher as a public official.[10]

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[10] In his concurrence in *Ellerbee v. Mills*, 262 Ga. 516, 422 S.E.2d 539, 542, Fletcher, J., distinguishes between the public school teacher and the public school principal stating that the latter occupies a policy making role and the former does not. Pet. App. 8; *See also*, "*Nodar v. Galbreath*, 462 So.2d 803, 808 (Fla. 1984) (declining to conclude public school teacher is a public official who accepts a policy making position with a government institution); *True v. Ladner*, 513 A.2d 257, 264 (Me. 1986) (noting no evidence that the public school teacher 'exercised substantial administrative or policy making responsibilities or supervised substantial numbers of employees'); *Richmond Newspapers, Inc. v. Lipscomb*, 234 Va. 277 (362 S.E.2d 32, 36) (1987) (concluding that public school teacher did not influence or control any public affairs or school policy), *cert. denied*, 486 U.S. 1023 (1988)," *quoting from Ellerbee*, 262 Ga. 516, 422 S.E.2d at 542, n. 3 (1992), Justice Fletcher concurring. Pet. App. 8. *Compare, Bowman v. Parma Bd. of Education*, 44 Ohio App. 3d 169 (where the court held that a public school teacher is a public official); *Mahoney v. Adirondach Pub. Co.*, 123 App. Div. 2d 10, 509 N.Y.S.2d 193, app gr 69 N.Y.2d 609, 509 N.E.2d 360 and rev'd on other grnds, app dismd 71 N.Y.2d 31, 523 N.Y.S.2d 480, 517 N.E.2d 1365 (1986) (high school football coach held to be a public official); and *Johnston v. Corinthian Television Corp.*, 583

Petitioner believes that the Supreme Court of Georgia has created a detrimental standard by allowing any jury to impose damages upon a broadcaster for false statements about our public school principals. Thus, any parent who may appear at a local school board meeting to criticize the conduct of the principal can easily be held liable for comments made, even if they were made in good faith. Pet. App. 8. Petitioner argues that "it is more important to permit a robust discussion about our public schools, whether sex education, drug use, or racial insensitivity is the topic, than to permit a principal to recover damages by a lesser standard than actual malice." *Ellerbee*, 422 at 542; Pet. App. 8. As Justice Douglas wrote in his dissent to *Gertz v. Robert Welch*, 418 U.S. 323 (1983),

> [t]his of course leaves the simple negligence standard as an option, with the jury free to impose damages upon finding that the publisher failed to act as a reasonable man. With such continued erosion of First Amendment protection, I fear that it may well be the reasonable man who refrains from speaking.

Id. at 360.

Although the instant case involves a non-media defendant, the effect of this ruling is wide reaching. Specifically, local newspapers and other media will be kept from reporting about matters which constitute issues of important public concern. Thus, the way the states determine an individual's status as "public" or "private" powerfully effects the manner in which the press decides

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P.2d 1101 (Okla. 1978) (public school coach-physical education teacher is a public official).

what to publish and, more importantly, what not to publish. *Milkovich*, Brennan, T. dissenting, 474 U.S. at 954. In holding that the *New York Times'* standard is inapplicable, the Supreme Court of Georgia has applied the "public official" standard in an extremely narrow way that is sure to restrict free expression within the State of Georgia. *Id.*

II. THE SUPREME COURT OF GEORGIA WHICH IS A COURT OF LAST RESORT HAS DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE DECISIONS OF THE SUPREME COURT OF MISSISSIPPI IN *REAVES V. FOSTER*, 200 SO.2d 453 (MISS. 1967), THE SUPREME COURT OF VERMONT IN *PALMER V. BENNINGTON*, 615 A.2d 498 (1992), AND THE MARYLAND COURT OF APPEALS IN *KAPILOFF V. DUNN*, 27 MD. APP. 514 (1975).

Five (5) appellate courts, including the Supreme Court of Georgia, have considered the issue of whether a principal is a public official. The Supreme Courts of Mississippi and Vermont and the Maryland Court of Appeals have all held that a principal is a public official, while the Supreme Court of Georgia and the Illinois Court of Appeals in *McCutcheon v. Moran*, 99 Ill. App. 3d 421, 425 N.E.2d 1130 (1981), have held that a public school principal is not a public official.

In *Reaves v. Foster*, 200 So.2d 453 (1967), the Supreme Court of Mississippi held that Foster, who was a principal at a center for african american students, was a public official for purposes of a state defamation case. In *Reaves*, several african american students had been dissatisfied with the school's operation and criticized the acts of the

principal. Several of the defendants had published a pamphlet depicting the principal as a puppet or dummy who would do anything the superintendent told him to do. The pamphlet stated that Foster was a "traitor to his race, a stooge, a stool pigeon, an informant, and betrayer of his people." Other statements which Foster claimed to be libelous included that "Foster is something less than a man . . . (he is) one who will sell out his people for his own interests, a stupid man and one everyone would like to hit two times or more." *Id.* at 454-455.[11]

Other complaints advanced by the defendants in *Reaves* included the children were permitted to leave the school grounds during school hours, that gambling was permitted at the school and on the buses, and that some of the children were required to assist in the cafeteria during class time. *Id.* at 455. In *Reaves,* the Supreme Court of Mississippi found that the principal was a public official who had the burden of proving malice before recovering damages. *Id.* at 456. The *Reaves* decision holds that "a man occupying a prominent position, public or quasi-public in nature, is subject to grave criticism and malice is not presumed, but must be prove[n]." *Id.*

In *Palmer v. Bennington School Distict,* 615 A.2d 498 (1992), Palmer, a principal of the Molly Stark Elementary

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[11] In Respondent's case in chief, Respondent argued that Petitioner had ill will toward Respondent because of a statement that Petitioner made in a memorandum discussing the upcoming board of education meeting. Specifically, "my friends, I am hoping we can count on you to help correct the problems that face North Cobb. . . . Alone there really is not much any of us can do, but in unity, we [can] strike back at the man that has done so much harm to so many." Pet. App. 65.

School, was found to be a public official for purposes of defamation law. In a lawsuit brought by the Bennington School District (hereinafter referred to as B.S.D.) where Palmer was a named defendant, Palmer asserted two counts of defamation against B.S.D. One count included that B.S.D. had defamed Palmer at a school board meeting where it was read aloud that Palmer had misappropriated funds and falsified an employee's time records. *Id.* at 499-500. The trial court designated Palmer as a public official and the Supreme Court of Vermont affirmed. *Id.* at 500.

Specifically, the Supreme Court of Vermont held that "[b]ecause Palmer had responsibility for and control over the governmental function of education, his position as principal 'has such apparent importance' that it justifies an independent public interest 'beyond the general public interest in the qualifications and performance of all government employees.' " *Id.* at 503; *quoting, Rosenblatt,* 383 U.S. at 86. Thus, the Supreme Court of Vermont concluded that Palmer, as principal of the Molly Stark Elementary School, who had power and authority within his school and over teachers and employees had, or at least ' "apeared to the public to have substantial responsibility for or control over the conduct of the [education]." *Id.* at 502; *quoting, Rosenblatt,* 383 U.S. at 85. Thus, Palmer was sufficiently high in the hierarchy of government to qualify as a public official. *Id.*

In *Kapiloff v. Dunn,* 27 Md. App. 514, 343 A.2d 251 (1975), the Maryland Court of Appeals held that Dr. Fred L. Dunn, principal at Robert E. Peary High School a public high school serving the Rockville, Maryland area, was within "the public figure-public official classification

and that his suitability for the position was a matter of general public interest or concern." *Kapiloff*, 27 Md. App. at 524. Dr. Dunn had received an "unsuited" rating by the Montgomery County *Sentinel* which published an article entitled "Our High School Principals: How Good Are They?" The article examined twenty-two (22) high school principals based on evaluations given by students, parents and teachers critiquing the principals' job performance. *Id.* at 518-519. The ratings used, included outstanding, good, poor and unsuited. The *Sentinel* attempted to portray the school, the role of the principal and how well the principal met the challenge of his "uniquely important job". *Id.* at 518.

The article profiled Peary as a strict disciplinarian and criticized his lack of innovative programs in the educational regime. It further commented that the school's stagnant curriculum lead to a stifling and boring atmosphere. Also, several teachers were dissatisfied with Peary and averred that Principal Peary harassed teachers through negative performance evaluations.[12] *Kapiloff*, 27 Md. App. at 518.

Dunn perceiving the article and its rating as an attack upon his qualifications as principal, brought suit against the *Sentinel*, the owners of the *Sentinel* and the publishing company. The jury returned a verdict in favor of Dr. Dunn.

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[12] These criticisms were similar to Ellerbee's criticism of Mills which included that "harassing and threatening tactics used by the administration must stop."

The Maryland Court of Appeals overturned the decision of the jury and found, even *assuming arguendo,* that the rating was a false statement of fact or an opinion based on false facts, Dunn did not prove by clear and convincing evidence that the statement was published with malice. The court held that it is plain that "a high school principal in Rockville . . . was within the public figure/public official classification and that his suitability for the position was a matter of public or general interest or concern."[13] *Id.* at 524. Further, the court held that Peary's position as a public high school principal, was a sensitive one, open to public criticism. Unless Peary showed that the right to freedom of speech was abused in a constitutional sense, he could not recover for injury sustained as a result of that criticism. 27 Md. App. at 545.

In contrast, the Illinois Court of Appeals in *McCutcheon v. Moran,* 99 Ill. App. 3d 421, 425, N.E.2d 1130 (1981), held that a teacher/principal was not a public official. In *McCutcheon,* a teacher/principal at the Audabon School in Chicago, Illinois, sued a janitor contending that the janitor had libeled her by pressing criminal charges and testifying against her at the board of education hearings. *Id.* at 422, 425 N.E.2d at 1132. The janitor argued that the teacher/principal was a public official for the purposes of the defamation suit. The Illinois Court of Appeals held that "the relationship a public school teacher or principal has with the conduct of government is far too remote, in our minds, to justify exposing these

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[13] The court in *Kapiloff* reasoned that the minimal parameters of the public official classification set out in *Rosenblatt* were met by a high school principal.

individuals to a qualifiedly privileged assault upon his or her reputation." *Id.* at 424, 425 N.E.2d at 1132.[14]

As stated, there is a split of authority between whether a principal falls within the classification of a public official for purposes of defamation law. However, the question of whether a plaintiff in a state libel action is a public official for purposes of the rule delineated in the *New York Times* case, is not to be determined by state law standards. *Rosenblatt*, 383 U.S. at 84. This is because the constitutional limits of free expression in the nation cannot vary with state rights. *See, generally Annotation, Libel and Slander: Who is a Public Official Or Otherwise Within The Federal Constitutional Rule Requiring Public Officials To Show Malice*, 19 A.L.R.3d 1361, 1372 (1968 and 1992 Supp). A public school principal such as Mills, necessarily affects the citizen population by and through his formulation of

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[14] The court in *McCutcheon*, discussed two earlier Illinois cases which had examined a similar issue. In *Basarich v. Rodeghero*, 24 Ill. App. 3d 889, 321 N.E.2d 739 (1974), the Illinois Court of Appeals held that high school teachers who were also athletic coaches were "public figures," because they were public employees who were paid with public funds. It appears that the *Basarich* court, however, incorrectly labeled the teacher/coach as a public figure since their reasoning clearly analyzes the teacher/coach as a public official under the public official standard enunciated in *Rosenblatt*. *In Johnson v. Board of Junior College District No.*, 31 Ill App. 3d 270, 335 N.E.2d 442 (1975), two junior college professors were held to be public figures because they had injected themselves into a controversy over textbook selection and use in the classroom. The holding in *Johnson*, which relied on *Gertz*, limited itself to the circumstances in that case. *Id.* at 276, and n. 1.

public policies. Thus, anything that touches on a principal's qualifications for office should be open to criticism.[15]

III. A STATEMENT OF PUBLIC IMPORTANCE DETERMINED TO BE KNOWINGLY AND RECKLESSLY FALSE, BUT NOT SHOWN TO PRODUCE A HARMFUL EFFECT, SHOULD BE PROTECTED BY THE FIRST AMENDMENT.

Petitioner argued in the motion for new trial and on appeal to the Supreme Court of Georgia that Respondent did not sustain any actual damages as a result of the false statements and therefore the jury verdict should not be upheld. Specifically, the evidence in the case showed that Respondent left North Cobb High School of his own volition and was chosen to become a new principal at Harrison High School, a new high school opening in the Cobb community. Pet. App. 93-95. The Respondent was chosen from approximately six (6) to ten (10) other candidates. Pet. App. 50-52. The evidence showed that Respondent Mills did not leave North Cobb High School as a result of the allegations. *Id.* at 107. In fact, the transfer to Harrison High School was a promotion. Jerry Ingram, the Deputy Superintendent for the Cobb County School District, testified that it was very prestigious to be elected principal of a new school and thus, it was considered a promotion. *Id.* Further, Mills testified that during the time the allegations were made, his salary continued to rise

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[15] "Criticism of those responsible for government operations must be free, less criticism of government itself be penalized." *Rosenblatt,* 383 U.S. at 85, 86.

from $50,000.00 to $61,448.00 through the time of trial. Pet. App. 33-37. Finally, as the jury initially concluded, Respondent did not sustain any actual damages as a result of the false statements. *Id.* at 57.

In *Pickering*, the United States Supreme Court stated in a footnote that "because we conclude that appellant's statements were not knowingly or recklessly false, we have no occasion to pass upon the additional question whether a statement that was knowingly or recklessly false would, if it were neither shown nor could reasonably be presumed to have had any harmful effects, still be protected by the First Amendment." *Pickering*, 391 U.S. at 574, n. 6. Petitioner would argue in summary, that absent proof of any harmful effects occasioned by the statement, that even if the statement was made knowingly or recklessly, it should be protected by the First Amendment.

The statements of the Petitioner in this case at bar regarded matters of public concern as they were directed at the school administration and its operation.[16] Testimony was introduced from a variety of witnesses on the truth or falsity of the particular statements. It was clear, however, from the jury's initial verdict that no evidence was introduced to establish that the publication had an

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[16] The trial court in *Ellerbee* charged the jury that the speech and statements complained of by the Respondent are of public concern. *See, Connick v. Myers*, 461 U.S. 128, 147-148 (1983). (Whether an employee's speech addresses a matter of public concern must be determined by content, form, and context of a given statement, as revealed by the whole record.)

adverse effect on the principal.[17] Therefore, Petitioner respectfully asks this Court to consider providing First Amendment protection to those statements which, although determined to be knowingly and recklessly false, deal with a matter of public concern and produce no harmful effects.

IV. CONCLUSION

For the foregoing reasons, the Court should grant this Petition For Writ Of Certiorari.

Respectfully submitted,

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[17] The Respondent never sought the advice or treatment of a psychiatrist or a psychologist and had testified only that some of his friends, specifically at Rotary meetings, would "tease" him and say "why are you bothering all those teachers at North Cobb."

APPENDIX I

Supreme Court of Georgia

Ellerbee, Defendant-Appellant,

v

Mills, Plaintiff-Appellee.

(Two Cases) Nos. S92A0595 & S92A0597

Appeal from the Superior Court of
Cobb County, Georgia

(Filed July 18, 1991 and November 26, 1991)

Decided Nov. 16, 1992

HUNT, Justice.

Dexter Mills, a high school principal, sued Dexter Ellerbee, a former teacher, for libel and slander. Mills contends that Elllerbee [sic] made false allegations, orally and in writing, concerning Mills' performance as principal. The trial court found that Mills was a private figure who had to prove by a preponderance of the evidence that Ellerbee failed to use ordinary care to determine the truth or falsity of his statements. The jury returned a verdict in favor of Mills. The trial court entered a judgment on that verdict, and permanently enjoined Ellerbee from making 27 statements about Mills. Ellerbee appeals. We affirm the judgment based on the jury verdict, but reverse the grant of the injunction.

1. We agree with the trial court that a high school principal is not a public official under the standard of *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (84 SC 710, 11 LE2d 686) (1963). The Court in *New York Times*

declined "to determine how far down into the lower ranks of government employees the 'public official' designation would extend." 376 U.S. at 283 n. 23. The category does not "include all public employees." *Hutchinson v. Proxmire*, 443 U.S. 111, 119 n. 8 (99 SC 2675, 61 LE2d 411) (1979). Rather,

> the "public official" designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs.

Rosenblatt v. Baer, 383 U.S. 75, 85 (86 SC 669, 15 LE2d 597) (1966).

Our courts have not yet determined which persons holding positions of responsibility in the public educational system are "public officials." While we recognize that a few states have extended the *New York Times* privilege to high school principals,[1] we believe the better view is that principals are not public officials. This is because, implicit in the reasoning of *New York Times* is the concept that the people should be free to question and criticize those who *govern* them. See *McCutcheon v. Moran*, 425 NE2d 1130, 1133 (Ill. 1981). Further, as noted in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 344 (94 SC 2997, 41 LE2d

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[1] To our knowledge, only three states have specifically addressed this issue. Compare *Kapiloff v. Dunn*, 343 A2d 251, 258 (Md. 1975) (holding a high school principal is within the public figure, public official classification), cert. denied, 426 U.S. 907 (1976) and *Reaves v. Foster*, 200 So2d 453, 456 (Miss. 1967) (treating a high school principal as a public official) with *McCutcheon v. Moran*, 425 NE2d 1130 (Ill. 1981).

789) (1984), public officials and figures have greater access to media and other channels of effective communication, and, therefore, a better opportunity to rebut false statements than do private individuals. Also, as noted in *Gertz*, an individual who decides to seek or accept government office must accept the consequences of that involvement in public affairs, and

> runs the risk of closer public scrutiny than might otherwise be the case. And society's interest in the offices of government is not strictly limited to the formal discharge of official duties . . . the public's interest extends to "anything which might touch on an official's fitness for office. . . . Few personal attributes are more germane to fitness for office than dishonesty, malfeasance, or improper motivation, even though these characteristics may also effect the official's private character."

Id. at 418 U.S. 344-345. In our view, under normal circumstances, a principal simply does not have the relationship with government to warrant "public official" status under *New York Times*. Principals, in general, are removed from the general conduct of government, and are not policymakers at the level intended by the *New York Times* designation of public official.

We also agree with the trial court that under the facts of this case, Mills is not a public figure as defined by *Gertz*, supra, 418 US at 345.[2] Because Mills is neither a

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[2] This is not to say that, in some instances, principals might not be public figures, under *New York Times*, by, for example, inviting attention and comment by thrusting themselves into a controversy. See *Gertz*, supra, at 418 U.S. 345.

public official nor a public figure, we affirm the judgment based on the jury's verdict for damages and attorney's fees.

2. The trial court's order of a permanent injunction enjoined Ellerbee from making 27 statements. We reverse the injunction because the jury did not find all of those statements defamatory in its verdict and because the order sweeps more broadly than necessary. See *Georgia Soc'y of Plastic Surgeons v. Anderson,* 257 Ga. 710, 715 (363 SE2d 140) (1987); *Retail Credit Co. v. Russell,* 234 Ga. 765, 777 (218 SE2d 54) (1975) (upholding narrowly drawn injunction that restrained commercial investigative company from making two statements about an individual).

Judgment reversed in S92A0595. Clarke, C.J., Bell, P.J., Benham, Fletcher and Sears-Collins, JJ., concur; judgment affirmed in S92A0597. Clarke, C.J., Bell, P.J., Benham and Sear-Collins, JJ., concur; Fletcher, J., concurs specially.

S92A0597. ELLERBEE v. MILLS.

FLETCHER, Justice, concurring specially.

This appeal raises the issue whether a principal of a public high school is a public official or public figure who must prove that statements about his job performance were made with actual malice before recovering damages for defamation. By holding that a principal is not a public official, the majority opinion belies this court's professed commitment "to protect the right of free speech." *High Country Fashions, Inc. v. Marlenna Fashions, Inc.,* 257 Ga.

267, 268 (357 SE2d 576) (1987). The opinion exalts the right of a public school principal to protect his professional reputation over the right of parents, teachers, and school officials to offer criticism of the job performance of the persons charged with the day-to-day responsibility of running our public schools. I would hold that a public school principal is a "public official" under defamation law.

1. In *New York Times Co. v. Sullivan*, 376 U. S. 254, 279-80 (84 SC 710, 11 LE2d 686) (1963), the United States Supreme Court held that the constitutional guarantees of freedom of speech and press require a public official in a libel action brought against critics of his official conduct to prove that the defamatory statement was made with "actual malice." Whether a government employee is a public official is a question of federal constitutional law, although states may give the term a broader meaning. Restatement (Second) of Torts § 580A comment c (1977); see *Rosenblatt v. Baer*, 383 U. S. 75, 84 (86 SC 669, 15 LE2d 597) (1966). In concluding that the supervisor of a county recreation area was a public official, the Court decided that

> the "public official" designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs.
>
> . . . Where a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications

> and performance of all government employees, . . . the *New York Times* malice standards apply.

Rosenblatt, 383 U. S. at 85-86.

No Georgia decision has determined which persons holding positions of responsibility in the public educational system are "public officials." *Byers v. Southeastern Newspaper Corp.*, 161 Ga. App. 717, 719 (288 SE2d 698) (1982). The three appellate courts in other states that have considered whether a principal is a public official announce their holding without clearly explaining their reasons.[1] The majority opinion similarly fails to justify its holding that a principal is a private figure. Instead, the majority dismisses public education as a responsibility of government and belittles the role of the public school principal. Relying on the "implicit reasoning" in the *New York Times* decision, the opinion confuses persons elected to public office with the term "public official" under defamation law as delineated in U.S. Supreme Court cases.

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[1] Compare *Kapiloff v. Dunn*, 27 Md. App. 514 (343 A2d 251, 258) (1975) (holding a high school principal is within the public figure-public official classification), cert. denied, 426 U. S. 907 (1976) and *Reaves v. Foster*, 200 So2d 453, 456 (Miss. 1967) (treating a high school principal as a public official) with *McCutcheon v. Moran*, 99 Ill. App. 3d 421 (425 NE2d 1130) (1981) ("The relationship a public school teacher or principal has with the conduct of government is far too remote, in our minds, to justify exposing these individuals to a qualifiedly privileged assault upon his or her reputation."). See generally Annotation, *Libel and Slander: Who Is a Public Official or Otherwise Within the Federal Constitutional Rule Requiring Public Officials to Show Malice*, 19 ALR3d 1361 (1968 & 1992 Supp.).

I conclude that a principal of a public school is sufficiently high in the hierarchy of governmental affairs to qualify as a "public official." The principal's position is one that has "substantial responsibility for and control over the conduct" of public education and "invites public scrutiny and discussion of the person holding it." See *Rosenblatt*, 383 U. S. at 85-86. The principal of a public school is the key governmental employee responsible for implementing the state's "primary obligation" to provide "an adequate public education for the citizens." Ga. Const. Art. VIII, Sec. I, Para. I (1983). As the school's chief administrative officer, the principal establishes school policy, recommends hiring and firing of teachers and staff, implements curriculum and other educational programs, expends and accounts for public funds, represents the institution before the public, and is accountable for the students' educational advancement and the faculty's performance.[2] Thus, unlike the decision in *McCutheon* [sic] *v. Moran* on which the majority relies, I differentiate between the role of public school principals, who occupy

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[2] The power of any principal, of course, is circumscribed by state law and standards and local policy. The statutory responsibilities of principals illustrate the critical role they play in public education. The Georgia Code requires a principal to be present when corporal punishment is administered, execute a bond for the accounting of public funds, exercise control over the buildings and grounds, and report a student's criminal act to the school system superintendent. OCGA §§ 20-2-731 (3), 20-2-960 (a), 20-2-1180 (a), and 20-2-1184 (a).

a policymaking position and exercise substantial administrative responsibilities, and public school teachers, who do not.[3]

Moreover, it is sound public policy to require a principal to prove reckless disregard before recovering damages for injury to his or her reputation. Otherwise, a parent who appears at a local school board to criticize the actions of the principal can be held liable more easily for comments made, even in good faith. It is more important to permit a robust discussion of our public schools, whether sex education, drug use, or racial insensitivity is the topic, than to permit a principal to recover damages by a lesser standard than "actual malice." "Criticism of those responsible for government operations must be free, lest criticism of government itself be penalized." *Rosenblatt*, 383 U. S. at 85.

2. A public figure, like a public official, "may recover for injury to reputation only on clear and convincing proof that the defamatory falsehood was made

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[3] See, e.g., *Nodar v. Galbreath*, 462 So2d 803, 808 (Fla. 1984) (declining to conclude public school teacher is a public official who accepts a policymaking position with a government institution); *True v. Ladner*, 513 A2d 257, 264 (Me. 1986) (noting no evidence that the public school teacher "exercised substantial administrative or policymaking responsibilities or supervised substantial numbers of employees"); *Richmond Newspapers, Inc. v. Lipscomb*, 234 Va. 277 (362 SE2d 32, 36) (1987) (concluding that public school teacher did not influence or control any public affairs or school policy), cert. denied, 486 U. S. 1023 (108 SC 1997, 100 LEd2d 228) (1988).

with" actual malice.[4] *Gertz v. Robert Welch, Inc.*, 418 U. S. 323, 342 (94 SC 2997, 41 LE2d 789) (1974). Unlike a "public official," however, the determination whether an individual is a "public figure" is adjudicated case-by-case. See, e.g., *Byers*, 161 Ga. App. at 721 (holding dean at state college was a "public figure" regarding dispute on the proposed elimination of his position). An individual may attain status as a public figure by position alone or by "purposeful activity amounting to a thrusting of his personality into the 'vortex' of an important public controversy." *Curtis Publishing Co. v. Butts*, 388 U. S. 130, 155 (1967); see, e.g., *Williams v. Trust Co.*, 140 Ga. App. 49, 54 (230 SE2d 45) (1976) (holding Hosea Williams is a public figure). "A citizen's participation in community and professional affairs" does not render him a public figure for all purposes. *Gertz*, 418 U. S. at 352.

I agree with both the trial court and this court's majority that Mills is not a public figure. His leadership role in civic clubs and professional associations, speeches to business clubs and educational groups, consulting positions with other school districts and universities, and membership on advisory boards in the educational field to not make him a "public figure." See *Georgia Society of Plastic Surgeons, Inc. v. Anderson*, 257 Ga. 710, 712 (363 SE2d 140) (1987) (holding plastic surgeons were not "limited purpose public figures" concerning "Skim Milk" article in medical journal).

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[4] It would be unnecessary to determine whether Mills is a "public figure" if the majority agreed that a public school principal is a public official.

3. Because of the constitutional requirement of independent appellate review, this court may affirm the jury award if Mills has proved "actual malice" by clear and convincing evidence. See *Bose Corp. v. Consumers Union,* 466 U. S. 485, 511 (104 SC 1949, 80 LE2d 502) (1984). A review of the record shows that Mills presented clear and convincing evidence that Ellerbee acted with "actual malice." Accordingly, I concur that this court should affirm the judgment based on the jury's verdict for damages and attorney's fees.

APPENDIX II

IN THE SUPERIOR COURT FOR THE COUNTY OF COBB
STATE OF GEORGIA

DEXTER MILLS	CIVIL ACTION
Plaintiff	FILE NO. 89-1-3715-18
-vs-	
DEXTER ELLERBEE	ORDER
Defendant	(Filed March 20, 1991)

The defendant in the above-styled case has pursuant to O.C.G.A. § 9-11-56 filed his motion for summary judgment. After considering argument of counsel, citation of authority and a review of the entire record, the court finds that one or more issues of material fact remain in dispute. Accordingly, the defendant is not entitled to judgment as a matter of law.

It is ordered that the defendant's motion for summary judgment shall be and is hereby denied.

SO ORDERED, this 20th day of March, 1991.

/s/ George H. Kreeger
George H. Kreeger, Judge
Cobb Superior Court
Cobb Judicial Circuit

[p. 443] **APPENDIX III**

as follows:

DIRECT EXAMINATION

BY MR. INGRAM:

Q Mr. Mills, would you state your full name for the record, please.

A Yes. Dexter Carol Mills.

Q Where do you live, Mr. Mills?

A 3561 West Hampton Drive in Marietta.

Q How long have you lived there?

A It will be six years in June.

Q How long have you been in public education?

A Seventeen years.

Q When did you – how long have you lived in the State of Georgia?

A Seventeen years.

Q Okay. Are you married?

A Yes, I am.

Q And was the lovely laid [sic] that testified before you your wife?

A Yes.

Q And how long have you and she been married?

A Eighteen years.

Q And do you have any children from that marriage?

A Yes, we do. We have a daughter who's [p. 444] thirteen years old, Kelly; and a son, Jacob, who's twelve years old.

Q And your wife told us that they attend schools in Cobb County?

A Yes, sir, Pine Mountain Middle School.

Q I think the jury probably already knows this, but how are you employed?

A I'm currently principal of Carl Harrison High School in West Cobb.

Q When did you get the appointment to be principal over at Carl Harrison High School?

A February of 1990.

Q Where did you work prior to Carl Harrison High School?

A I was principal at North Cobb High School.

Q And how long were you principal over at North Cobb?

A I was principal for five years.

Q If you would, start with when you got out of college. Well, first of all, tell me your educational background or describe that for the jury, please.

A Okay. Yes. I graduated in 1973 from Tennessee Technological University in Cookville, Tennessee, with a

bachelor degree in health, physical [p. 445] education and minor in second education. I received my master's degree. I was a teaching graduate assistant there in health and physical education. That was in 1974. Then have got an add-on master's degree from Georgia State University in Atlanta, and I have an educational specialist degree in educational administration from Jacksonville State University in Alabama.

Q Okay. If you would, take us from the point you began your career in public education up to the time you became a principal at North Cobb High School.

A Okay. I was a teacher at Garrett Middle School in Austell for six years, health, physical education teacher.

I left and went to the University System of Georgia and taught at Floyd Junior College for one year.

I returned to the Cobb County school system in 1981 as an assistant principal at South Cobb High School, where I served for three and a half years, and then I was employed as a personnel supervisor involved with employing all the secondary teachers and coaches for the Cobb County School District for six months, and then I was appointed principal of North Cobb High School the end of June of 1985.

Q Okay. Why did you choose a career in [p. 446] public education? Probably a question you've been asked before.

A Yes, sir. I enjoy kids. I enjoy seeing kids being successful. I guess it's one of those things where you go through public education, and in my particular situation, not growing up in a normal family, I had a lot of teachers

that meant a lot to me. So I thought that that would be a worthy profession that, you know, I'd like to get in and give some things back. I really enjoy being around kids and watching them be successful.

Q Where did you grow up, Mr. Mills?

A Several different places. I was born in Michigan, and most of my life I grew up in Tennessee, but I attended schools, public schools in Florida and Alabama as well.

Q Since becoming the principal over at North Cobb High School, have you – What types of activities have you performed in the North Cobb community, if any?

A Well, as a citizen, I'm involved with the North Cobb Rotary Club. I'm the past president of North Cobb Rotary Club and past president of the Cobb County Rotary Council of all the seven clubs in Cobb County. That's been my involvement with a community club.

Q Okay. Where where do you attend church?

[p. 447] A Marietta United First Methodist.

Q Do you have any hobbies or other interests that you pursue if you are not at the school or meeting with parents or something like that?

A Yes, sir. I love to play raquet [sic] ball and tennis. I enjoy reading. Those are the three things that I like to do most, and aerobic exercise and those kinds of things.

Q Tell the jury, if you will, how you ended up over at North Cobb High School as the principal?

A I was in personnel at the time and I had applied for a high school principalship, and I had applied two years prior, and the position – I wasn't chosen for the position that I had applied for at that time, and so as I went into personnel, the opportunity for North Cobb came and I expressed my interest to Mr. Ingram, and at that time the superintendent, Dr. Tocco, and applied, went through the process and went through the interview process, and then was informed one morning about 7:00 a.m. that I had been chosen and to report to North Cobb, and I asked them how to get there, and that's – that was how it came about.

Q What kind of interview process does the school system put you through when you're – someone's applying to be a principal?

[p. 448] A Well, you have to be interviewed by the assistant superintendent for high school operations, which is Ron Gallaway. You have to be interviewed by the assistant superintendent for personnel administration, and that's Grace Calhoun, Mr. Ingram, Dr. Tocco. At the time I was interviewed by Dr. Burke, who was the associate superintendent for instruction for the school district. Those are the main people that I had to interview with.

I had been in an administrative training program as an assistant principal from South Cobb, and during the time I was in that program, the position came open in personnel, and so I applied for the personnel supervisor because I felt like I needed to get some more experience in that area, and so I left the administrative training

program that year and went directly into the personnel division.

Q When did you first arrive over at North Cobb High School?

A June 28th, 1985, something like that.

Q Who was the principal at North Cobb prior to when you went over there?

A Mr. James Lavender.

Q When you first arrived over at North Cobb High School, approximately how many teachers were there [p. 449] at that time?

A A hundred and ten that were regularly staffed at our school my first year of teachers.

Q Okay. Tell us, if you will, what is the role of a principal at a high school?

A Well, it's – it's a role where you have to be involved with the instructional program, you have to be involved with the public relations program, you have to be involved with the extracurricular program. It's a very big job one person can't do alone.

I am lucky at North Cobb I had five very good assistant principals that assisted me during the time, involving the instructional program, supervising the teachers, reviewing lesson plans, developing plans to improve the school, developing citizens advisory councils, helping organize Booster Clubs and work with the Booster Clubs to fund projects and to support the school in many various activities that goes on in a public high school.

Q I know I've learned a lot about principals since I've been involved in this case, but is it the principal who makes the decisions on firing and hiring people and that kind of thing?

A Yes. The principal is the one who evaluates recommendations. In my case, I'll always [p. 450] utilize my assistant principals and allow them to be in the interview process. For example, if I have a science assistant principal, which I did when a science position came available, I would allow them to sit in on the interview and ask those more esoteric questions about their instructional field, and let them advise me and, but the final recommendation ultimately is mine as to who would be in certain teaching positions, who would be in certain extracurricular positions.

Q And if there is a problem or a concern with a teacher, whose ultimate responsibility is it to try to remedy that situation?

A It's the principal's responsibility. It wasn't as clear – clearly understood maybe in a few years back, but now it's very clear because the State Department of Education has an evaluation that's a statewide evaluation, and it clearly states that the principal is the one who will make final recommendations on teachers in terms of any type of remediation plans or any of those kinds of things and that that principal would follow up on those plans if he or she designed such plans.

Q Okay. How often does the principal at a high school evaluate or review a teacher's performance?

A It's changed over the last several years.

* * *

[p. 513] charged him I want to say a hundred fifty dollars. I think that's what we charged him.

He wrote a check to North Cobb High School for a hundred fifty dollars for using that, and of course, he was sorry that he did it and admitted that it was poor judgment on his part.

Q Paragraph twenty-two, Section C, quote, "Many students with special education needs have been misplaced intentionally by the administration," and quote.

A And that intentionally is underlined, and there is no way that an administrator that I know of at our school would purposely put a kid out of a class that they need to be in.

Now, there are kids that have special ed needs that for one reason or another, their parents may agree or disagree with, say, you know, well, I don't want them in that class or whatever, and they have that option, but we don't intentionally put kids out of classes that they need to be in.

Q Are you aware of the reason that Mr. Ellerbee cites in support of this, that you're intentionally misplacing kids in class?

A Well, I know of one conference that I had about a teacher and a parent and the child that there [p. 514] were some allegations the student was telling the parent one thing and the teacher was in the middle, and I think there was some guilt on the teacher's part, and I dealt with the teacher and dealt with the family.

They weren't satisfied. They wanted me to move a student from this teacher's class, but this teacher was the only certified teacher that we had in the building to meet his identified need through his individual education plan, and it was either he stayed in that teacher's class or be moved out.

The boy's name was Donnie Wilson, and the mother was upset that we couldn't do anything other than that, that we couldn't fire the teacher and hire another one or we weren't responding to her requests that she wanted us to, and you know, I mean there was nothing I could do. I couldn't fire the teacher just because – and I think the teacher had made some judgment errors and I pointed out that to the teacher, but she was upset with me.

Q Was this the boy who also lost his life in the car accident?

A Yes.

Q Was that parent upset with you about your handling of that situation?

A Yes. She – she was very upset.

[p. 515] Q What was her name?

A Miss Edna Wilson, and she was upset because she felt like that the frustration the boy had gone through at the school and the teachers, the thing the teacher supposedly had done and said had hurt him enough that he, when he had a car accident, that it was more suicidal than accidental, and she was – she was very upset about it.

Q Did you feel that the teachers had made some mistakes in that situation?

A Yes. The teacher had made some judgment errors, and I pointed those out to the teacher and asked the teacher not to do – do you want the story?

Q I think you're going to need to because I think that's one of the bases they cite for you intentionally misplacing students.

A Because of the parent being upset, the parent pulled the student out of special ed class that this teacher had, but what had happened was the teacher was absent from school one day and he had a copy of a video in his desk, The Breakfast Club. I don't know if you've seen it, but it's got some – it's an R-rated movie that he was bringing to school to swap with another teacher. He had it in his desk.

The substutute [sic] teacher planned – said go get the [p. 516] video off of Mr. Smith's desk, and he did. He went to get the video. Well, instead of getting the one on the desk, which was, I don't know, about frogs, or something, he got in the desk and got the one from The Breakfast Club, and he showed it. He took it back and told the substitute teacher, yeah, that is the one that was there, so they started watching it.

Q The substitute didn't know about it?

A Substitute teacher didn't know. Just know the lesson plan, so they started seeing it, and the substitute teacher kind of got concerned because of the language and all that was in this video, The Breakfast Club. He went home and told his mom. His mom called me. I called the teacher in. I told the teacher that it was inappropriate to have those kind of movies in school and he

shouldn't have had those kind of movies in school and where kids could get them.

He went back and chastised the kid in the class, Donnie, about his mom calling, and then his mom wrote a letter that that boy came home that afternoon and said, mom, I'll hate you till the day that I die, and that was – she wrote me a letter, and that's the way the letter started.

Actually I think she sent it to Dr. Tocco complaining about me. She had complained about special [p. 517] education needs I think since her child was in elementary school through the years that Donnie was in school, and so Donnie was pulled out of the class.

I had a faculty meeting. I told the faculty, I said, "Folks, don't show any video unless an administrator has given you permission to do that. What you may not see as being offensive, for example, the Romeo and Juliet video, which is the classic Romeo and Juliet, it has a nudity scene, and the teachers came and said, "Can we show it?"

I said, "No, don't show it. I mean, don't show a video unless an administrator had a chance to review those in the future."

I thought I had done a good job. I told them not to do it, and I assume that wouldn't happen. It just so happened that Donnie got into a class where in one of our vocational classes a teacher was out and there was a substitute teacher who obviously hadn't heard my little speech about don't show the video, had brought this video from home, called Delta Force, put the video in and combine two classes, and they did.

I think the vocational teachers were on some kind of state evaluation or something. They did and it had some language in it and Donnie was in that class and, of course, I would see where the mother and would think, boy, [p. 518] what kind of deal is it over at North Cobb. She was upset. She called me. "What are you doing about the videos?"

I said, "Ma'am" –

Q Same woman that had called before?

A Yes. "What are you doing about the videos? I believe that this happened again to my son."

I said, "I can't believe it either. I'm sorry and I will deal with it."

Q Did you call in the people involved and reprimand them?

A I called the substitute. I called the teachers in and told them to deal with their substitutes and make sure, and my assistant principal in charge of substitutes, I told him to make sure all of them got the message they never show a video unless a teacher has it for them to show, not what something some student may pop in and bring.

Q Did anyone say anything to Donnie – what was his last name?

A Donnie Wilson.

Q Did anyone get onto him?

A I think some of the kids said your mom called and that kind of thing, and I know it was embarrassing

for him, but I want you to know it wasn't [p. 519] anything we wanted to happen as an administration. It's just unfortunate it happened.

Q And then when Donnie was in a car accident, did the mother blame you and the administration for that?

A Well, she blamed us because she what she had said was that it was a suicide, that he was so upset at what was going on in school and being teased, that he drove his car into a tree.

THE COURT: This might be a good breaking point. Are you finished with this particular –

MR. INGRAM: Yes, finished with –

THE COURT: Ladies and gentlemen, we will break until 1:30. You will be on your own. Please do not discuss the case and please be back in the jury room at that time.

(Whereupon, Court recessed at 12:05 p.m., for lunch, and reconvened at 1:30 p.m., as follows:)

THE COURT: They are all here. Are you ready to go bring them in?

(Jurors entered the courtroom.)

THE COURT: Mr. Ingram, you may continue.

BY MR. INGRAM:

Q Are you okay?

* * *

[p. 530] Q Is that the difference between what you would have made at North Cobb and what you'll make at Harrison?

A That's right. To do that, but yet if I leave North Cobb, maybe Mr. Ellerbee would leave North Cobb alone, those administrators at North Cobb, and quit battering the school to make it look like it's less a school than what it is.

His attack was on me and dragging into all the bad things that he could think of about North Cobb or make up or whatever to try to convince people, and I just felt like as long as I was there, the possibility of him being there to cause more problems and to cause the community no to be as proud of their school as they should be.

Q What effect did Mr. Ellerbee's allegations and his persistence have on your personal life aside from your professional life?

A Well, I'm very much a people person. I like to be around people and do things. When Mr. Ellerbee started his allegations in the newspaper and the newspaper articles, many of my friends would try to console me and say don't worry about it, you know, it was – it was just every time I would go someplace, friends, if it was in the Rotary Club, and I know they [p. 531] meant well when they would tease me about it and say something about, you know, "Why are you bothering all those teachers at North Cobb," and laugh, it became like I was a joke, that – and you know, while they were friends, they didn't realize really how much it hurt me. It was to the point I didn't want to go out and be around even my friends because either I had to defend myself of the latest articles or the

latest time he went to the Board of Education or things – signs that were put up in people's yards about what I was doing or how bad he was saying that I was, and again, they didn't know that he was masquerading behind the name of the citizens for a better North Cobb or North Cobb High School Improvement Association. They didn't know that was one person and one person alone, because he wouldn't put that in the newspaper. Dexter Ellerbee against Dexter Mills.

Q Did it have any effect on your marriage and your relationship with your wife?

A Well, it caused – you know, it caused us – it caused me to have to, I felt, spend more time at the school and be involved in functions and even give up some personal time with family and my wife because I wanted to make sure things went right because if something went wrong and I wasn't aware of it or I knew

* * *

[p. 534] now.

Q So that case will go to trial in Federal Court sometime. You don't know when?

A Yes. I don't know when.

Q Do you have any kind of claim against him in that suit?

A No, I do not.

Q This is the only claim you've got against him?

A That's correct.

Q Have you had to take any time off of work? When you've taken time off of work to go to these depositions and do that, did the school pay you for that?

A No, they do not. I have to take my vacation or personal leave time to be away to attend depositions. To be in Court this week I'm on vacation.

MR. INGRAM: That's all I have.

CROSS-EXAMINATION

BY MR. LANDERS:

Q Mr. Mills, you expect this jury to believe that there ain't no problems at North Cobb High School?

A I don't believe I said that there weren't any problems at North Cobb.

Q Well, do you expect this jury to believe [p. 535] that there are things that don't happen up there that are any more serious than running in the hall and chewing gum?

A There are serious things that happen at a school.

Q And if there are problems in the public high school, if something's wrong, who's ultimately the one that's got to answer for it?

A The principal.

Q It's you, right?

A That's correct.

Q The man at the top, right?

A I agree.

Q And you are willingly to accept that responsibility; isn't that right?

A That's correct.

Q I guess it's fair statement that you, as with your wife, you disagree with what Mr. Ellerbee has said; is that right?

A Yes, sir, that's correct.

Q That you've got a very large difference of opinion with him; is that right?

A That's correct.

Q When were you married, Mr. Mills?

A I'm sorry.

[p. 536] Q When were you married?

A In 1973, June 2nd.

Q Now, I know you're employed as a principal. Who is your employer?

A Cobb County Board of Education.

Q All right, You work for the Cobb County Board of Education, who's elected by the members of the community; is that correct?

A That's correct.

Q And how is your salary paid, please, sir?

A I get twelve monthly checks.

Q Where does the money come from? I guess that's the better question?

A From the State and from the county government.

Q All right. And that's taxpayer generated; is that right?

A Yes, sir.

Q Then it's a fair statement to say that you're a government employee?

A Yes sir. Yes it is.

Q Very good. Let's talk about your salary here just a few minutes, okay?

A Okay.

Q While he's going through that, you are the [p. 537] principal of Harrison High School, right?

A Yes.

Q You were in Court yesterday when Jerry Ingram testified about that being a prestigious position; isn't that right?

A Yes, that's correct.

Q You are proud of that, aren't you?

A Yes.

Q And yet you testified a while ago that even though it's – well, let me ask it this way. Is it a promotion for you to go to a brand-new high school like that, a new high school?

A Well, it's a lateral move in one respect in that you're already a principal going to another school. The responsibility factor of opening a new school is very

large, so as far as prestige, you use that word, yes, I would say it's prestigious to have that opportunity.

Q More – I guess it's more challenge to it; is that right?

A Yes, sir.

Q Is it a fair statement to say that if you take another job that's either got more responsibility or more money, that it's a promotion; isn't that correct?

[p. 538] A I think that would be fair to say that if you make that decision looking at all your options that you have available.

Q Then it would be; is that right?

A Yes.

Q Do you know how many persons applied for that position?

A No, sir, I do not.

Q Now, when – when you got the nod as the new principal of the new Harrison High School, to what extent did you have to get out into the community and see folks out there where Harrison was going to go?

A Actually we started getting in the community about maybe around late February of this year, actually getting out in the community, having meetings with parents from North Cobb and meeting with parents from McEachern and students, so I guess, what, five months ago, something like that, four months ago we started.

Q Primarily for the purpose of just letting – just orienting these people to the new high school and the

people whose children would be going and that sort of thing; is that right?

A That's correct. We wanted them to feel comfortable about their children coming to the school [p. 539] and giving them some information about the curricular, extracurricular program.

Q Did you meet any of the parents, members of the community who were affected by this charge?

A Well, I spoke to many, and some came up, yes.

Q Now would you say – is it a fair statement to say that the principal of any high school, regardless of whether it's ongoing like North Cobb or a new high school like Harrison, being a principal is a large job with a large amount of responsibilities; isn't that right?

A Yes, sir.

Q And you've got two thousand children in the high school who basically are under your watch and care while they are at school; is that right?

A In loco parentis.

Q That's right. And for us lawyers, what does that mean? Is that in the place of a parent; isn't that right?

A Yes, it is.

Q While they are at school, you are in the place of their parents?

A Yes.

Q So basically when parents send their [p. 540] children to school, they are entrusting their children to you?

A Yes, sir.

Q And the school administration and the teachers and everybody that's there?

A Yes, sir.

Q Therefore, they have got – the parents have a very large stake in who's out there, who's standing in their place; isn't that right?

A I think they have a very much a concern of who's there.

Q A very large interest in it?

A Absolutely. It's their children and that's the most important thing to parents.

Q And have an interest in the qualifications of the persons who fill those positions?

A Yes, sir.

Q Beyond, you know, people who they deal with normally in government, for example; is that right?

A Yes, sir.

Q Now let's go back to show you what's been marked as Defendant's Exhibit No. 4, please, and you can flip through it and see if you recognize any of it, and tell the jury what it is, please.

A These are the salary computations for, I [p. 541] suppose, all of these are mine for me since 1981-82, through 1990-91.

Q Okay. That's the current school year; is that right?

A Yes, that's right.

Q Or the current year that you're employed by the county, correct?

A Yes, sir.

Q Now, and 1981 was the year that you went to South Cobb as assistant principal; is that right?

A Yes, sir.

Q So in your administrative career, just for the jury's information, let's tell them how you've done salary wise okay. Let's start with the year '81-82 and tell the jury what you earned.

A Twenty-two thousand four hundred and fifteen dollars.

Q Okay. That's in '81 and '82. All right. In '82 and '83?

A Twenty-three thousand nine hundred and ninety dollars.

Q Got a raise, right?

A Yes, sir.

Q Okay. Next page, is that '83 and '84?

A That's correct. Twenty-five thousand six [p. 542] hundred and sixty-two dollars.

Q All right. And now we are on '84 and '85; is that right?

MR. INGRAM: Your Honor, let me interpose an objection and approach the bench, if I could, please.

(Whereupon, a discussion was had at the bench, off the record.)

THE COURT: Do you want to state your objection for the record or –

MR. INGRAM: Yes. I just want to objection [sic] to this line of question on relevance.

THE COURT: Any response for the record?

MR. LANDERS: Your Honor, it goes to show that he has not in fact been harmed in his profession as he's claimed because his salary, I expect and I think it will indicate it's gone up every year. That's why it's relevant.

THE COURT: At this point I overrule the objection.

BY MR. LANDERS:

Q We are on what year?

A 1984-85.

Q All right. And that year you earned?

A Thirty thousand four hundred nineteen [p. 543] dollars.

Q All right. Was that – were you assistant principal then or were you in another job in the county? I can't remember the exact chronology.

A What happened was '84-85 school year, half the year was as assistant principal at South Cobb and the other half of the year I moved to a personnel position. Assistant principal's positions are for two hundred ten days and the position I moved into the other half of this

hear was a two hundred and forty day position, so I went – I worked thirty more days on the contract.

And got more money because of it?

A Yes.

Q Okay. Let's go ahead and go to the next – well, in your job as the personnel –

A M'm-hum.

Q In that capacity you made?

A Well, they have got it figured, it says thirty-five thousand five hundred and seventy-three.

Q But you got paid for the per diem?

A Per diem, that would have been my salary had I stayed in that position for a year, but I came in and worked the last six months.

Q Okay. So you got half the year you were [p. 544] paid the assistant principal's salary per diem?

A Absolutely.

Q And the other half was – okay, I follow you. what's the next one?

A Next one is the computation for '85-86 going to North Cobb as the principal.

Q This was your first year as principal at North Cobb?

A (Witness nodded head.)

Q How much was that? There may be some duplicates.

A There are. I'm checking. Forty-eight thousand one hundred and seventy-five dollars.

Q All right. And then '87 and '88 I think is where we are?

A Yes. Fifty thousand two hundred sixty-one dollars.

Q Okay. So during the time that the allegations began, your salary still went up two thousand dollars annually; is that correct?

A Yes, because of the State raises that all teachers and administrators got.

Q All right. Turn the page, and that is what year?

A '87-88

[p. 545] Q And you made how much money?

A Fifty-three thousand four hundred twenty-six dollars.

Q From how much the year before?

A I think it's fifty.

Q From?

A Fifty thousand two hundred and sixty-one.

Q And then the next year is what?

A Two of those '88-89.

Q Still principal at North Cobb?

A Yes, sir.

Q And you made how much?

A Fifty-five thousand seven hundred thirty-five dollars.

Q All right. And then the next page or the next year is?

A '89-90.

Q And the salary that you earned was?

A Fifty-seven thousand six hundred twenty-four dollars.

Q All right. And then '90-91?

A This school year, sixty thousand one hundred and forty-eight dollars.

Q Okay.

Now, are those the amounts that you earned, given [p. 546] the caveats that we discussed earlier as to the per diem that you earned for that half year's; is that right?

A Yes. Dividing between those, the thirty thousand, thirty-five thousand, I think it ended up being thirty-three thousand actually for income tax reporting that year, somewhere in that range.

Q All right. Fine. Now, are these records that you have seen before? Do they send these to you every year to review?

A Absolutely.

Q And you review them, and if they are correct, they just go into effect, and they send you your check every how often?

A That's correct.

Q Okay. So other than for the time where the two got combined in one year, they are right; is that basically what we are saying?

A Yes.

Q So every time that you have been entitled to a raise, you've gotten it, correct?

A That's correct.

Q Now, you were present in court when your wife was testifying about many of the activities that you're involved in; is that right?

A Yes, sir.

[p. 547] Q In addition to your job as principal of North Cobb High School, you engage in several professional organizations and, in fact, are involved in several consulting positions; is that correct?

A That's correct.

Q Now, you are – are you still a member of the North Cobb Rotary Club?

A Yes, I am.

Q And you've been president of the Rotary Club, correct?

A Yes.

Q And are you still president?

A No.

Q When were you president of the Rotary Club?

A I think it was '87-88.

Q All right. And as a result of the – of the allegations made by Mr. Ellerbee, I mean nobody in the Rotary Club came and stripped you of your title as president, did they?

A No, sir, they did not.

Q And you were also president of the Cobb Rotary Council?

A That's correct.

Q Amalgamation of all the different Rotary Clubs in the county; isn't that correct?

[p. 548] A. Yes.

Q So you were president of the umbrella organization that covers the Cobb Rotary Clubs; is that correct?

A That's right.

Q Is that elected or appointed?

A It's railroaded.

Q Who railroads it, Mr. Mills?

A It's the presidents from all the clubs get together.

Q I guess that means it's appointed?

A Yes. That's probably a better term.

Q So the presidents of all the Rotary Clubs get together and decide who they want to elect as president of the Rotary Council?

A And I didn't show up for that meeting.

Q Now, do they submit it for approval to the Rotary Clubs throughout the county or like they say, this is it and –

A Each club, one vote.

Q And the president of the club gets that vote?

A Yes.

Q And you abstained or did not appear?

A I wasn't there. I was the only one absent.

[p. 549] Q Do you know what the vote was?

A Six-oh.

Q Okay. Congratulations. So you were well thought of well enough by the presidents of all the Rotary Clubs in Cobb County to be elected as their overall president, correct?

A I suppose.

Q And that was in November of 1989; is that correct?

A That's correct.

Q Okay. Are you still president of the Cobb Rotary Council?

A I am not.

Q When did your term end?

A '89-90, I guess, June of '90.

Q And nobody in the Cobb Rotary Council said, golly, look at these allegations and stripped you of your title as president of the Cobb Rotary Council, did they?

A No, they didn't, but when I would go to do my make-ups at different clubs around the county, I remember specifically Bill Foster in the East Cobb Club, he made a comment one day at their breakfast meeting. We were at a 6:30 a.m. meeting when they do their sunshine meeting. He made a comment, "Well, I'd like to [p. 550] go ahead and pay two dollars." That's what they do so they can embarrass someone. "I will pay two dollars and say it's nice to have Dexter Mills here today and maybe him being here, he's not bothering any teachers at North Cobb," or something like that.

Q Is that a practice that occurs at the sunshine meetings is that –

A Yes.

Q – you drop your two dollars and make some comment about somebody in the Rotary?

A That's right. And Bill meant it in good humor, but that's one of those where I was ridiculed to the extent that I felt like, you know, here I am at East Cobb and I'm making up a meeting and now people that don't know me – of course they all knew Bill, but I mean, you know, they are going to draw an opinion as to what has happened, and he even explained. He said, "You know he's had some notoriety in the newspaper," and then he sat down.

Q Have you ever dropped down your two dollars to do that?

A To say things. I have dropped down two dollars in my club to say things about things that kids at North Cobb have done about our school, because that's the real reason I joined the Rotary to begin with, [p. 551] because Rotary does a lot for kids in the school, so yes, I have, but I haven't said anything like, you know, anything derogatory about anybody or embarrassing or anything like that.

Q Did I understand you to say that's why you joined the Cobb Rotary Club, to get out amongst the community and publicize North Cobb and the things that are going on there; is that right?

A Well, to make sure that North Cobb, that the merchants and business people in the community would have an ear of the things that were going on at North Cobb, yes.

Q Every chance you get in the Rotary Club, for lack of a better word, and I can say it because I was one, a cheerleader for North Cobb?

A Number one cheerleader for North Cobb.

Q Now, let's see, some of your professional associations, the American Alliance for Health, Physical Education, Recreation and Dance, you are still a member of that?

A I am not a member anymore.

Q How about the Georgia Association Health Physical Education?

A I am past president of that association.

Q Are you still a member of that?

[p. 552] A No, I am not.

Q Is that something that is teacher-oriented rather than administrator-oriented?

A Teacher, public school, private school and college teachers. It's not really for administrators.

Q I see. So the only reason you are not involved in it anymore is because you are in administration now?

A That's correct.

Q I see, but you held the president's position in the Georgia Association; is that correct?

A That is correct.

Q Okay. The National Education Association, is that – again, is that a teachers or administrators?

A It's both.

Q Okay. So you are still a member of N.E.A.?

A No, I am not a member of N.E.A.

Q What about the Georgia Association of Educators?

A No. I had – you know, I have been a member. When I was a teacher, I was a member. Those are really more teacher focused groups.

Q I see. Also a member of the American Federation of Teachers and Georgia Federation at one time?

[p. 553] A At one time, yes.

Q Before you became an administrator?

A That's correct.

Q Before you crossed the line of labor to management; is that right?

A I guess so.

Q All right. Now, you were also on the National Committee with the American Alliance for Health, Physical Education, Recreation and Dance; is that right?

A Yes, I was.

Q And had a seat on Physical Education Public Information Committee of that?

A That is correct.

Q Is that right? And currently, I guess – let me ask you, Cobb County Administrative Association?

A Yes.

Q And Georgia Association of Secondary School Principals?

A Yes.

Q At one time you were the membership chair person for the Seventh Congressional District?

A That's right.

Q Is that still the case?

A I am president elect. I didn't show up for [p. 554] that meeting either.

Q President of Georgia Association for Secondary School Principals?

A Seventh District.

Q Of the Seventh District.

Q Is that elected, appointed or railroaded?

A That's all three.

Q Primarily.

A Primarily it is elected.

Q Okay. By all the members of that Association, Seventh District, correct?

A Yes.

Q So in an open ballot those persons recognized you and elected you; is that correct?

A That is correct.

Q Now, there's a National Association of Secondary School Principals as well; is that right?

A Yes.

Q And you are a member of that?

A That's correct.

Q And you were on the committee for Urban Schools in that organization?

A Yes.

Q Okay.

A It's one of the standing committees.

[p. 555] Q I see. And you were the representative for the southeast on that committee at one time?

A And still am.

Q And are still. Good. Do you have any other positions that you hold in the National Association of Secondary School Principals?

A No.

Q Now, how many people nationwide are there on the committee of urban schools?

A Seven.

Q How many?

A Seven.

Q Seven?

A M'm-hum.

Q So you're one of seven in the nation on this committee?

A Yes.

Q Is that an appointed position?

A Yes, it is, by the State president of the Georgia Association.

Q So the Georgia Association president recognized your ability to contribute to this committee and appointed you as that representative; is that correct?

A Yes.

[p. 556] Q Now, those are just your professional associations. You have some consulting positions that you've held and you've spoke at seminars and forums and that sort of thing too; is that right?

A Yes.

Q And one of them was in the Saint Charles Parish in Louisiana?

A Yes.

Q What was that?

A When I was a physical education teacher, I did a workshop on new games. I have to say it that way because sometimes it's been quoted as nude games, but it's new games, and I did that for their parish.

Q All right. And at Auburn University at Montgomery?

A Yes.

Q What was that?

A Same, workshop.

Q I see. Georgia State University, have you had any association with Georgia State?

A Yes, I have. As a teacher I did some workshops for Georgia State University and I also have done some as a principal for Georgia State.

Q Okay. And Kennesaw State College?

A Yes. I have done – I have spoken to their [p. 557] Assistant Principals Institute, their – I am their luncheon speaker each year for the last three years.

Q I see, and then the Rabun Gap Natoochee School?

A Yes, I did a workshop for their teachers.

Q Was it a teacher or administration type?

A It was for the entire faculty, teaching faculty.

Q I see. And then last, but certainly not least, at Harvard University Graduate School?

A Yes.

Q What was that all about?

A It's called the principal center. It originated at Harvard University and I applied to Harvard to be accepted. They pick one hundred people mostly from the United States, but about fifteen from other countries in the world and they bring people together to talk about issues in education, how we can improve and those kinds of things. They evaluate portfolios and they offer and extend the opportunity for people to come one hundred at a time, and I had the opportunity to go.

Q As one of the hundred?

A As one of the one hundred.

Q Now, you've moved beyond one of the hundred [p. 558] now, haven't you? You're on the facilitator list, for lack of a better word, now; is that right?

A Yes.

Q Can you describe to the jury what that is?

A Well, there are seven of us that get together and plan the workshop for Harvard – it's Harvard Principal Center – each year, and we will get together and plan the activities, the issues that we want to address during – during the institute. The institute's a ten-day institute. I

really believe I was chosen though to be the interpreter for the people that would come from the south to interpret the people from Boston.

Q I understand that.

A But –

Q Well, you are from Michigan originally. Now, so you've moved from attendee to someone who is kind of in charge, not necessarily in charge, but one of the ones who facilitates that institute; is that correct?

A Yes.

Q Brings people in from all over the nation and from foreign countries as well; is that right?

A That's correct.

Q Now, from Rabun Gap to Harvard, all of [p. 559] these, all of these organizations sought you out; is that right, except, you know, initially, of course, you applied at Harvard?

A Right.

Q And was included, but now they have asked you to continue as a facilitator; is that correct?

A One of the students in the Harvard group was from Rabun Gap and wanted me to do an exercise there with his people, and the guy who started Rabun Gap was a Harvard graduate.

Q So all of these organizations, these institutions, have recognized your expertise in administration and your experiences and wanted you to share them with other people; is that right?

A Yes.

Q Because of your effort in getting out and getting into the community in North Cobb while you were principal there, and it's just because you are principal, I understand that. I mean, is it a fair statement to say that if I'm principal up here, people are going to know who I am; is that right?

A People in the school and school community, yes.

Q They are going to know who you are?

A I hope so.

[p. 560] Q Kind of like Cheers, everybody knows your name?

A That's right.

Q Let me show you what's been marked as Defendant's Exhibit No. 5, and it's the front page I am primarily interested in, but can be tell me what Defendant's Exhibit 5 purports to be?

A This part?

Q Well, let's identify the document first. Then we will identify the rest of it.

A Yes. It's a Cobb Extra, January 24, 1991 edition.

Q And I'm sorry. My wife got hold of the coupons before I could get it to court. Does your picture appear on the front page of that?

A Yes, it does.

Q And in what connection does your picture appear on the front page of the Cobb Extra?

A As principal of Harrison High School.

Q Okay, so the article talked about redistricting, that sort of thing?

A Yes.

Q And notes that Harrison is going to open and they put your picture on the front page as the new principal; isn't that right?

[p. 561] A That's correct.

Q Now, are you quoted anywhere in that article?

A Yes.

Q And what did you say?

A Well, Mr. Keenum had been quoted on some things, and then I was asked my thoughts about the new school and how it would affect the students.

I said, "My idea is the good side of it, the students that come as juniors will be, quote, seniors for two years. They will get the chance to design the school crest, the fight song, the senior ring, set new kinds of traditions. Our slogan for the next year will be, the tradition begins with me. It's just going to be a lot of fun," he said with a smile.

Q Do you keep a scrapbook or something like that?

A I don't have this in the scrapbook, but I did see it in the paper.

Q The questions was do you keep a scrapbook or something like that?

A Yes, I have some things. I know we have that article in the archives file we started on Harrison High School.

Q At Harrison?

[p. 562] A Yes.

Q You are familiar with this article, though, is that what you testified?

A I am familiar with the article.

Q This article is the one that you're familiar with; is that right?

A That is correct.

Q Let me show you what's been marked as Defendant's Exhibit 7 – I'm sorry. Defendant's Exhibit 6 and 7, and just let you look over them and let me ask you this.

In your past days as a member – I don't want to do the alphabet – National Association of Secondary School Principals, did you have occasion to participate in some forums and hot line activity, was it in Orlando?

A Yes.

Q When did you do that?

A This past year. Actually March. Twice I've been on the hot line committee for the U.S.A. Today.

Q Okay. Could you tell the jury a little bit about that?

A Because of my involvement with the National Association of Secondary School Principals, Lou Arstead,

who's in charge of public relations for NASSP called and [p. 563] asked if I would sit in on the hot line. I did it in March of last year in San Diego, and because I'm on the Urban Schools Committee for NASSP, of course, they pay my expenses to go to these conventions and do these, so obviously when they asked me if I'd help, I said I'd be glad to help, be glad to do it.

Same thing in Orlando, because I am on the National Committee, they pay my expenses and I went to Orlando and answered questions from the hotline that came from all over the United States, questions about secondary education, curricular questions, extracurricular questions, how you deal with certain situations at a school, of course, the disclaimer's clear that whatever the principals say doesn't mean that's –

Q I take it that – I'm sorry, I didn't –

A I was just going to say that the disclaimer is that whatever we day is not the position of U.S.A. Today. It's just an opportunity –

Q I take it U.S.A. Today published the telephone number and said there will be people to answer your calls, and you were one of those people. Is that right?

A I think we had like sixty.

Q Sixty?

[p. 564] A Sixty for the three day hotline time.

Q Okay. So the National Association and because of your involvement on the Urban Schools Committee, got you involved in this and you manned the hotline basically?

A That's correct.

Q They felt good enough about your expertise as an administrator to put you basically on the hot seat with parents and other interested people calling from all over the nation; is that correct?

A That's correct.

Q Do you have – do you remember where any of these people called you from? Did you ever get that far with them?

A We turned in a log to NASSP so they could keep the statistics, but we had Indiana, Alabama. I even had one from Alaska. I had one from New York. The deaf school from New York called and we had to do the telex, whatever thing it is.

Q Right. Right. Now, these letters, can you identify what the letters are?

A Yes. They are letters from the National Association of Secondary School Principals from the executive director, Dr. Tim Dyer.

Q They are addressed to whom?

* * *

[p. 1098] Ladies and gentleman, the plaintiff has the burden of proof, which means that he must prove whatever it takes to make out his case, except for any admissions by the defendant.

The plaintiff must prove his case by what is known as a preponderance of the evidence. That is evidence upon the issues involved which while not enough to wholly

free the mind from a reasonable doubt is yet sufficient to incline a reasonable and impartial mind to one side of the issue rather than the other.

You are the sole judges of the credibility or believability of the witnesses. In deciding this, you may consider all the facts and circumstances of the case, including the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they testify, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or lack of interest and also their personnel [sic] credibility as you observe it.

While you may consider the number of witnesses on each side, you are not required to decide in favor of the side with the most

* * *

[p. 1102] Now, ladies and gentlemen, slander or oral defamation consists in; one, imputing to another a crime punishable by law; or two, making charges against another in reference to his trade, office or profession calculated to injure him therein.

A libel is a false and malicious defamation of another expressed in print, writing, pictures or signs tending to injure the reputation of the person and exposing him to public hatred, contempt or ridicule.

A libel is published as soon as it is communicated to any person other than the party libeled. Oral communication of written defamation constitutes libel.

A private individual need not prove a defamatory statement was made with actual malice. He or she may

recover if the broadcaster failed to use ordinary care to determine the truth or falsity of the statement.

A publisher of a matter is responsible not only for the actual words published but for the innuendo that may arise from such words. Words apparently innocent may convey a libelous charge when considered in connection with the innuendo and circumstances surrounding the publication.

[p. 1103] The plaintiff need not prove that his reputation has been damaged by statements imputing a crime to him. The law will infer an injury to his reputation.

A private figure plaintiff may recover for defamation by showing of negligence on the part of the speaker or the writer.

Neither the intentional lie nor careless error materially advances society's interest in uninhibited, robust and wide-open debate on public issues.

They belong to that category of utterances which are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by social interest in order and morality.

The protection of one's own good name reflects no more than our basic concept of the essential dignity of worth of every human being, a concept at the root of every decent system of orderly – of ordered liberty.

I charge you that – I charge you that if you should find the defendant made false

* * *

[p. 1120] THE COURT: Could I see you all before we publish this.

(Whereupon, a discussion was had at the bench, off the record.)

THE COURT: Ladies and gentleman, would you please briefly return to the jury room and please do not discuss the case at this point and the alternates please return to your room.

(Jurors left the courtroom.)

THE COURT: Well, I've shown you the problem. Basically the verdict form has four blanks compensatory, nominal, punitive and attorney fees, and there are no amounts in the blanks marked compensatory and nominal, and as I under the law, in order to support any kind of award on – I'm not sure about attorney fees – for punitive damages we require –

MR. LANDERS: I mean, as to punitive damages, that's exactly right. Now, I'm not exactly sure as to the other. I would suggest that if they don't find any liability, there's not any bad faith or anything like that.

If they find – well, I guess they can find for the plaintiff and award no dollars. I would suggest to the Court that in order to find – to [p. 1121] put any money in either those last two blanks, they are going to have to find something to go with the first two blanks, if anything.

MR. INGRAM: I really don't know about the – I've never encountered this situation. The only thing that

I'm hesitant about is whether – I know that for the punitive damages.

THE COURT: It takes at least –

MR. INGRAM: – takes at least a dollar.

THE COURT: – in one of those blanks.

MR. INGRAM: As to the attorney fees, I don't know.

MR. LANDERS: I don't either.

THE COURT: The way the Court of Appeals jumps around on attorney fees.

MR. LANDERS: I guess an instruction is what we need, to do an instruction for the, at least to get it past the initial problem. You know, if you find then compensatory or nominal damages, then you can reach the issue of punitive damages, is that – words to that effect, because that seems to me to be what the law is. I am open to suggestions from the Court. I don't know.

MR. INGRAM: I think an instruction from [p. 1122] the Court that in order to find punitive damages, there must be some award for either compensatory or nominal damages. You need to go back out and decide what you want to do in that regard and with that understanding –

THE COURT: Something to the effect that before you would be entitled to award punitive damages, you would have to first find an award for either or both compensatory and nominal damages.

MR. INGRAM: Right.

MR. LANDERS: Right.

THE COURT: And if you find no compensatory nominal damages, then you could not award punitive damages.

MR. LANDERS: Right.

MR. INGRAM: Right.

MR. LANDERS: I'd like to get the attorney fee issue figured out before we bring them back in.

THE COURT: Okay. You got someplace to –

MR. LANDERS: I don't have – I just don't have it on me right now. But do you have the code section 13-1-11. I just don't – I just don't know.

* * *

[p. 1127] (Whereupon, Court reconvened at 6:30 p.m., as follows:)

(Jurors entered the courtroom.)

THE COURT: Have you reached a verdict?

THE JUROR: Yes, your Honor, we have.

THE COURT: Miss Cochran, can you bring that one.

THE CLERK: In the Superior Court for the County of Cobb, State of Georgia, Civil Action file No. 89-1-3715-18, Dexter Mills, plaintiff, versus Dexter Ellerbee, defendant. Verdict. We, the jury, find for the plaintiff in the amount of one dollar as compensatory damages, one dollar as nominal damages, twenty-six

thousand nine hundred and twenty dollars as punitive damages and twenty-six thousand nine hundred twenty dollars as attorney's fees, this 24th day of May, 1991, John Dial, foreperson.

THE COURT: Mr. Ingram, Mr. Landers, can the two of you work together and prepare a judgment that would –

MR. LANDERS: Be glad to, your Honor.

MR. INGRAM: Yes, your Honor.

THE COURT: Anything else before the jury is released?

* * *

APPENDIX IV

PLAINTIFF'S EXHIBIT 1

[p. 1] TO: Teachers of North Cobb

FROM: Mr. Dexter Ellerbee

DATE: April 25, 1988

SUBJECT: School Improvement

Dear Colleague:

The primary purpose for me writing you is to elicit your support to improve North Cobb. As a former teacher for 8 years here and a property owner in Acworth, I have come to appreciate and admire what a fine school we have had. But now it distresses me to see and hear what North Cobb has become.

For the last 3 years, the great school that you and I have grown to love has virtually become something to hate. The school is simply not the place we once enjoyed working. From conversations with many of you; people in our communities; and from my own personal experiences here; I have observed the following:

1) Teacher morale is at rock bottom.

2) Teachers are leaving the school about as fast as they arrive.

3) Discipline is so lacking that students are basically in control of the school.

4) Academic expectations have lessened.

5) Many worthwhile Educational Programs are being unsupported and phased out.

6) Several extra curricular activities have worsened.

7) The public image at North Cobb is controversial.

8) Voluntary community involvement is poor.

9) Administrative tasks are appearing to be more time consuming and more important than teaching.

10) Teachers are most insecure about their jobs.

These observations and many more are aspects that if left unaddressed and unimproved upon will ruin our school.

I believe the time is right for teachers, both past and present, of North Cobb to work together to resolve the problems before us. As teachers, we can make proposals and recommendations to the administration for future implementation. Together, without the presence of the administration or the public at this time, I am hopeful and confident that changes will be done in our school. If any improvement can be made at North Cobb, it will take a commitment from all of us.

I know much is at risk when you consider supporting such an endeavor. But remember, nothing is really ever gained when there has not been any sacrifice. In an effort to return North Cobb to the school we were once proud of will require a dedicated effort from all of us. I hope you will not let others perform the part meant for you to play. As strength can come with unity, contentment and peace of mind can come with a concerted effort devoted to the improvement of a once great school.

[p. 2] On Monday, May 9, 1988, at 7:00 P. M. a meeting of teachers *only* will be held at my home in Acworth to discuss improvements needed to be made at

North Cobb. With the advice of private counsel and State Representative, Carl Harrison, who once served on our school board, I believe as a group of concerned teachers that we can develop a proposal for the administration to consider and implement. I hope as many of you as can come will be present to give input and assistance to the development of our proposals.

Looking forward to working with you again, I am in your service,

Respectfully,

/s/ Dexter Ellerbee
Dexter Ellerbee

P. S.) The address of the meeting is: 4451 Seminole Dr., Acworth, Ga. It is located near Acworth Elementary School about two blocks up from the lake. If more information is needed, call me any time at 948-8108.

cc: Members of the Board of Education
Dr. Thomas Tocco
Jerry Ingram
Ron Galloway
Grace Calhoun
Dexter Mills
Rep. Carl Harrison

PLAINTIFF'S EXHIBIT 2

[p. 1] TO: Former Teachers and Effected [sic] Personnel of North Cobb High School

FROM: Dexter Ellerbee

DATE: May 17, 1988

SUBJECT: Board of Education Meeting

Dear Colleagues:

After meeting and talking with many of you by now, I sense the time is right to put words into action. Many of you were apparently unable to attend the meeting with fellow teachers on May 9 for various reasons. I know all of you want to help improve North Cobb but are perhaps reluctant or perplexed as to the best way of supporting the school we once were so proud to be a part. Put regardless of your circumstances now North Cobb desperately needs your help.

To my knowledge the school faces one of its worst administrations since its conception. The reign of terror that Mr. Dexter Mills has imposed has suffered this school long enough. Many of you did not want to leave North Cobb; but for one reason or another you were most likely convinced it was in your best interest to do so. Mr. Mills has that unique power to intimidate a teacher to forfeit their position by placing erroneous information in their personnel file; remove them from leadership or coaching positions; denying opportunity for advancement; development of remediation plans; phasing out programs that they teach; placing veteran teachers with the worst materials and environments to work; keeping the best teachers with low level students; and using threatening language

regarding your performance. Of course, these methods and many others are typically and often used. But I believe his lowest form of intimidation is the fact that he lets you know in actions and words that you are not the professional or teacher suitable to work at his school.

My friends I am hoping we can count on you to help correct the problems that face North Cobb. Even though most of you have put the school behind you and have moved forward elsewhere, still surely there is that feeling that you wish you had done something about the problem you faced. From rumor and information I have been told by most of you the problem you faced was primarily Mr. Dexter Mills. Alone there really is not much any of us could do. But in unity, we strike back at the man that has done so much harm to so many.

From the many proposals that teachers have submitted to me to improve the school, I have listed 5 below that are resounding:

1. Resignation of transfer of Dexter Mills
2. Reinstatement of teachers removed or have left North Cobb where vacancies exist.
3. Removal of derrogatory [sic] information from every teacher's personnel files.
4. Declaring null and void remediation plans designed by the mills administration
5. A written reprimand in Mr. Dexter Mills' personnel file for fraudulent actions taken at North Cobb.

All of the proposals rendered will be forwarded to Mr. Mills and to the Board of Education later this week for

consideration. Submission of these recommendations are a start in the right direction. But more is needed before the 5 listed can be enacted. A presentation will be made before the Board of Education on May 26, [p. 2] I share many of your concerns about North Cobb High School. As a teacher at North Cobb for many years, I have seen the school go through many changes. But the excellence of North Cobb and the strong community support we received was due, in part to our faculty extra-curricular staff (our coaches). Many of these dedicated and loyal staff members are no longer employed at North Cobb. Nearly all of the coaching staff has been replaced with a resulting decrease in community support. Many veteran teachers have also left the school after teaching hear [sic] for many years which has increased suspicion in the community and fear in the remaining members of the faculty. A partial list of teachers who have left North Cobb in the past three years are who the community trusted and identified with the school would include:

Coaches no longer in their position	Teachers and Administrators
Roscoe Carden	Doug Sharp
Rick Swales	Gary Dean
Van Jacobs	Polly Williams
Paul McMahon	Ann Beatty
Marty Mazikowski	Harold Kennedy
David Reddell	Addie Cochran
Mike Pavlak	Jay Dye
Nina Cole	Romona Vanderslice
John Owens	Tom Jones
John Crowers	Ann Rudder
Diane Byers	Andrew Harris
	Pam Bottoms
	Linda Schell

Many of these teachers would not have left the school without preasure [sic] being put upon them to leave. Many young teachers ahve [sic] also been hired and left the school after one year who are not on this list.

Your letter of April 25, 1988 is both accurate and timely. It is also accurate for you to state the risk involved to support this project. I certainly realize that that lack of attendance at your meeting would appear to say that many faculty members do not share your views on the school. But many teachers who share your views fear retaliation by the school if they attend. These teachers have seen the tactics employed to force others into resigning and leaving North Cobb and realize their name could also be on this list of ex-coaches and teachers. I am not proud of my decision to not attend but for my family and job security, I feel it is a decision I must make. For the same reasons mentioned, I feel that I should not sign this letter and will not do so. There are many others who support your views but will take the same action I do for the same reasons. For those and myself, let me add Good Luck and best wishes.

[p. 3] Thursday, at 7:30 p.m. to forward proposals that teachers have mentioned for improvement at North Cobb. In order to be successful in this endeavor, I have been told by several attorneys and local politicians to prepare the following for the Board of Education to review:

1. Written statements of proposals for improvement.
2. Statements of circumstances that occurred to individual teachers submitted, signed or

unsigned or presented orally by that teacher.

As many of you that can please send me through the mail a written statement of your dilemma with the Mills Administration. Include any recommendations you feel would help the school as well. And if you can, come to the meeting on May 26. Your presence gives our group strength and this is something we need in our effort against the corruption in the Central Office and the Board of Education. Whatever way you choose to help I will need your information prior to May 26. If you could be present on May 26 call me prior to the meeting at 948-8108 any time.

As I said earlier North Cobb needs you in a tremendous way. It is just not fair to let what happened to so many of us continue to go on. The school can be saved from the plague that has hit it. It only takes the will and determination to stand firm for what is right. I hope all of you share the sentiments and actions I believe are necessary to take. I have included a copy of a letter received last week from a teacher at North Cobb that reiterates much that all of us realize. I look forward to hearing from you soon.

Remaining in your service,

Dexter Ellerbee

P.S. A citizens group has found to improve North Cobb. Their first meeting will be on May 23, Monday, 7 p.m. in the Acworth Beach House on Acworth Lake. I am hopeful they can give additional support to our efforts.

Mr. Dexter Ellerbee
P.O. Blx 106
Clarkdale, GA 30020

PLAINTIFF'S EXHIBIT 3

[p. 1] TO: Mr. Dexter Mills

FROM: Mr. Dexter Ellerbee

DATE: May 21, 1988

SUBJECT: Teacher Proposals for School Improvement.

After meeting and discussing with some 25 teachers from North Cobb Proposals for School Improvement, I have compiled as many as have been forwarded to you for your review. Attached are the proposals and supporting reasons for them. Since many of these recommendations are of a serious nature in regard to you personally, I will not distribute this information to all of the teachers under your employ at this time. I will forward all of the enclosed information to the Board of Education and County Office to apprise them of the improvements teachers feel are essential to implement.

I realize the embarrassment that these proposals cause to you and to the school. But as difficult as you may find it to believe, I along with a number of fellow teachers that have served this school and community well over the years want to see our school continue to grow and be an asset to this area. For these reasons, we are compelled to submit what is enclosed.

It is our hope that you, the Board of Education, and the County Office will take heed to the proposals as rendered. I trust that together we can put this school back on the right track. To this endeavor I remain to be,

Sincerely,

/s/ Dexter Ellerbee
Dexter Ellerbee

Enclosures
cc: Members of the Board of Education
Dr. Thomas Tocco
Jerry Ingram
Ron Gallaway
Grace Calhoun
Rep. Carl Harrison

[p. 2] PROPOSALS FOR NORTH COBB HIGH SCHOOL

1. Your resignation or transfer to be effective at the end of school year 87-88.
2. Reinstatement of former teachers that left North Cobb under your administration where vacancies occur.
3. Declare null and void all intervention plans rendered under your administration.
4. Remove all derogatory information forwarded to every teachers' personnel file submitted under your administration.
5. A written reprimand placed in your file for fraudulent actions taken at North Cobb.

6. Stronger actions taken against students that violate school policies.

7. The Principal should be on the job, present, and accounted for.

8. The Principal needs to have compassion and support for the entire school staff.

9. The school needs to discontinue the policies of paying students to attend and awarding bonus points to their overall averages based on attendance.

10. Where problems exist among the staff, personal contact should always be used first instead of written memos or reprimands.

11. Evaluations and/or assessments need to be done fairly and given equal treatment.

12. Favoritism needs to stop. All teachers and staff should be treated equally.

13. Teachers should be praised more than criticized.

14. All educational programs or courses offered need to be supported by the Administration.

15. The Principal should uphold and stand behind Cobb County School Policies as set forth by the Board of Education.

16. Extra-curricular sponsors should be returned to their positions if they have found favor with the community and especially if they have had successful records.

17. The administration needs to research ways of lessening the paper work so that teachers have more time to teach instead of developing more tasks for them to do.

[p. 3] 18. Teachers need to be included in the decision making process for this school.

19. Students need to be better assessed and properly placed in classes.

20. Teachers should not be held accountable for curriculum coverage when the administration takes time away from classes.

21. Harassing and threatening tactics used by the administration must stop.

22. The Principal and Administration need to be moral examples in the school and the community.

23. Teachers need to be treated as professionals and made to feel wanted as an important part of this school.

[p. 4] REASONS TO SUPPORT PROPOSALS FOR NORTH COBB HIGH SCHOOL

1. You have done more harm to more people than any other administrator. There now exists a lack of confidence, trust, and respect for you.

2. Teachers have left because of you. Their heart and lives were devoted to North Cobb and they should be given the opportunity to return.

3. Remediation plans have been poorly documented and erroneously prepared. The plans were designed by administrators who are not familiar with the field or study taught. Most plans were designed for ulterior motives and not in the best interest of the teacher.

4. Personnel files in most cases have been added to because of ulterior motives. Problems could have been handled in person instead of by letter. Most

information submitted is not that important to place on file.

5. For failing to be fair, ethical and administering this school in the way worthy of the Education Profession, a reprimand is therefore necessary. Even though the State Department awarded an excellent rating to the school upon its inspection, the entire examination was staged and directed by you for their benefit. Therefore the award is a farce. In addition for your efforts in ruining the lives and careers of many good and faithful people to this school, we believe you should be reprimanded for fraudulent actions and conduct unbecoming the position you were appointed to hold.

6. Teachers are tired of sending students to you for serious offenses and minimal punishments offered. For instance, when a teacher is cursed, more should be done to them than giving them Saturday school.

7. Your presence is needed at school. Leaving the school in the hands of others weakens your leadership.

8. Often times you appear to support the parent and/or student over the teacher. In as much as you try to be sympathetic and understanding of them, you need to try this with staff.

9. The practice of awarding money and extra points to over-all averages based on school attendance is unethical.

10. A school should be run with the personal touch and not be reprimand or memos. Mr. Ron Gallaway once told me that, "you had the ability to be a good Administrator, if only you would use that ability."

11. It has become common knowledge that evaluations and/or assessments are done with an observing

Administrator for some teachers and not for others. For a document of such importance, it would seem that the administrator would need to at least be present in order for them to render an honest judgment. Of course, you are as guilty as any other administrator for doing this.

[p. 5] 12. The school has no need for favoritism. Some teachers are discriminated against. For instance, some have homerooms and others do not. Some teachers have offices and others do not. Some teachers get away with a lot of play time outside and others do not. Some teachers can get away with wearing any type of apparel while others cannot. And some teachers get the students and schedules they want while most do not, etc.

13. Most times teachers hear only the bad and rarely the good. Every teacher at some time deserves praise. The constant criticism you and your administration render has caused a terrific morale problem. Most teachers wonder why they are in the profession and strive to leave this school.

14. A teacher is trained to teach particular subjects or programs. Every one of us believe our classes are important and deserving of your support.

15. There have been times when you have circumvented school board policy. Three examples are: dress codes, plagiarism, and removal of teachers.

16. Coaches have been replaced for frivolous reasons. Many programs once actively supported and successful have now since been weakened.

17. Teachers want to return to the profession they love. The paper work you and the administration have created has become a nightmare. For example, the record format for keeping tardies and absences has become most difficult.

18. Local school policy should be developed with input from all teachers. Teachers are made to feel a part of the school when they have some say in it.

19. Better placement of students could be done if county guidelines were followed regarding prerequisites. Leveling of students is better done when counselors examine permanent records more closely.

20. Teachers cannot cover as much material when the administration takes too much time away from classes. For example, mandating teachers to alot 15 minutes each period for one week and encouraging more for the purpose of filling out index cards for a radio stations' contest, The Bangles, is not fair to the academic teacher if they are to be responsible for curriculum coverage.

21. Intimidation methods used in dealing with personnel is unethical. Teachers are tired of the harassment that you delegate to those that in any way oppose you. Tactics displayed have been in the assignment of veteran teachers to: poorly equipped classrooms, badly damaged trailers, badly damaged classroom furnishings, and to stressful situations for the handicapped or those with health problems. Teachers are tired of the frequent evaluations and the lack of confidence you display in front of students in regard to their performance. We are tired of the threatening language and gestures you and the administration has used when dealing with personnel matters. It is an uncomfortable feeling to have you frequently place our jobs in jeopardy. And finally, we feel that you do not have any right to force our resignations by threatening the revocation of our teaching certificates if we fail to comply with your demands.

[p. 6] 22. Over the past 3 years, you and your administration have been seen in school, at school events,

and in the community illustrating conduct unbecoming of an administrator that our school can be proud. Specifically, you and others have been heard telling lewd or vulgar jokes and using obscene language. We believe that our administrators need to be examples and role models within our school and our community. In addition, teachers feel it morally wrong in the way you and your staff handle personnel matters whether it be in relation to a teachers' performance or in regard to a teachers' personal problems.

23. Teachers and staff employed here are to be treated as family. This school should be an institution all of us participate and take pride in. We should work together to better serve the communities we are a part of. But during the last 3 years, teachers have felt left out and made to feel worthless. There always appears to be a lack of concern and support when teachers develop health problems. Teachers are also insecure about their futures here and many of them wonder who will be the next one forced to leave. For the treatment provided by you and your staff, many teachers wonder why they ever got into this profession.

PLAINTIFF'S EXHIBIT 7

June 2, 1988

[p. 1] To: Faculty of North Cobb High School

RE: School Improvement

Dear Colleague:

I know many of you would like to commend Mrs. Linda Morrisson of the Social Studies Department for her presentation to the Board of Education on May 26. She indicated that she spoke for the majority of you by stating that the faculty was in support of the administration. She further iterated how outstanding Mr. Dexter Mills was as Principal. I am sure as many of you as can will want to congratulate and tell her how much you appreciate her efforts to assure the school board of the contentment found at North Cobb.

I want to thank some 25 teachers and 27 citizens for their courageous contributions in offering proposals for school improvement. These recommendations and supporting reasons were forwarded to Mr. Dexter Mills, the Central Office, and the Board of Education for consideration.

During the course of the summer, public meetings will be held monthly to continue to gather support and input into the needed changes for improvement in our school. Meeting announcements will be posted in the local newspapers or you can call me to find out when and where other meetings will be held. I trust many of you will continue to come and support such efforts to improve North Cobb. A combined effort with the community will restore our school to what we expect it to be.

If you would like to help but feel that you cannot for whatever reason, please forward your written statements signed or unsigned to me and I will forward them to the administration. Also, I or any of a number of other concerned citizens will voice your concerns before the Board of Education. In addition, if you would like to help in a way that does not involve you personally, please consider a monetary contribution even if it is made anonymously. Your help in this endeavor will be greatly appreciated and your donation will help defer the costs of attorneys, printing, and postage.

I look forward to seeing you soon and I hope the summer goes by slowly for you.

In your service,
/s/ Dexter Ellerbee
4451 Seminole Dr.
Acworth, Ga. 30101
or
3472 Bothwell St.
Clarkdale, Ga. 30020
948-8108

cc: Members of the Board of Education
Thomas Tocco
Ron Gallaway
Grace Calhoun
Dexter Mills
Rep. Carl Harrison

PLAINTIFF'S EXHIBIT 9

[p. 1] PUBLIC PROPOSAL AMENDMENT AND SUPPORTING REASONS FOR IMPROVEMENT AT NORTH COBB HIGH SCHOOL

OCTOBER/1988

The following is to be added to the document compiled in June of 1988 by Citizens for a Better North Cobb.

PROPOSAL

22. Corruption needs to be removed from our School.

SUPPORTING REASONS

22A. It has been revealed that a particular Assistant Principal was taking property out of the school for personal use. The property was identified to be a computerized calling network that was used in the Cherokee County home of the Assistant Principal for the purpose of soliciting voters.

B. A football coach assaulted a student last year during school hours. The assault occurred during class time within the hallway and was witnessed by an Assistant Principal.

C. Many students with special education needs have been misplaced *intentionally* by the Administration. Parents have tried to address these concerns; but their pleas have fallen on deaf ears.

D. The head football coach has mysteriously won in two consecutive years the raffle held by one of the booster clubs. It is reported that the coach won $9,000 one year

and a new pickup truck the next year. It seems suspect that raffles occur in our school; that the coach has won twice in a row; and that the drawing appears to be held in secret.

E. The selection process for Teacher of the Year at North Cobb is not handled properly. Ballots are issued to all teachers to nominate their favorite candidate; but there is never a run-off. In addition, most teachers indicate to us that they over-whelmingly supported a particular teacher; but another teacher won. Many teachers believe the selection process is rigged so that the Administration has a teacher to win who is in support of it. The final count of ballots is certainly suspect when one or two Administrators determine the winner.

[p. 2] F. The Administration has hired two teachers of a highly questionable background. One of the teachers received a transfer to another school last year. But the remaining teacher is said to have had a peculiar relationship with a student while having taught in Cherokee County. We contend that the Administration should take more precaution when reviewing the personnel files of those that are to teach our children.

G. Many students have called to indicate the sighting of drugs within our school. Typically, it has been noted that drugs pass hands on the way to lunch and in the long lunch periods. The same students claim that substances exchange hands virtually in front of teachers as well as administrators. It would seem that stronger supervision is needed in our lunchrooms to prevent these transactions from occurring.

H. Parents are claiming that discrimination was used to award parking spaces at school to students. While there are few spaces to go around, the Administration awarded spaces first to football players, band members, and cheer leaders. A raffle was held for those others that wanted to park at school. We believe more consideration should have been awarded to those that work and need to leave school early. It is the kids that work that probably should have been given spaces first.

I. Large sums of money have been spent on the remodeling of the office of the Administration. Remodeling has occurred during two of the three years Dexter Mills has been the Principal. Many feel that new office furniture, cabinets, and other materials are a waste of taxpayer's money when our school as some of the worst trailers for teachers and students to work in.

J. PTSA enrollment records are misleading and recruitment procedures are unethical. Information that has been revealed to us from several teachers and parents indicate that last year and this year many people were placed on membership rosters when they did not pay their dues nor wanted to be included in this organization. By attending regular meetings, it can be easily said that while PTSA membership may indicate 100% involvement, the truth of the matter is that very few actually attend or are really involved.

Secondly, many people find the recruitment of members unethical because dues are paid for people who do not want to join. Also, students are lured into joining on promises of special benefits by being a member. An example is a concert by Z-93 Radio to those who are

PTSA card holders. In addition, teachers are lured into joining by promises of special benefits to them if their homeroom is 100% enrolled. For example, teachers are eligible to win from a drawing a trip to Gatlinburg for two if their homeroom is 100% enrolled. These and possibly other incentives need to be prohibited so that PTSA can return its focus to education.

K. Recently, the Administration has permitted the student council and the Department Heads to circulate petitions during school time to show their support for Dexter Mills. This practice is highly suspect and unethical because not only does it, in come cases, take away from education time, it also places pressure upon individuals to choose sides. Many parents, students, and teachers believe this practice should be stopped. Many indicate they feel intimidated should they not sign and others feel that this practice is simply politics. It would seem that this kind of politics should not be allowed in education.

PLAINTIFF'S EXHIBIT 40

NORTH COBB HIGH SCHOOL
IMPROVEMENT MEETING

Monday, May 23, 1988, at 7:00 p.m.
in the Acworth Beach House located on
Acworth Lake Dr. off Beach Street

Parents, teachers, and students affiliated with the school over the last three years are invited to attend.

Recommendations for school improvement will be developed and forwarded to the administration for consideration.

If you have been dissatisfied, hurt, or troubled over occurrences at this school, please come and support concerned citizens to resolve there [sic] problems.

SPONSORED BY THE CITIZENS FOR A BETTER NORTH COBB

This meeting is not sanctioned by the Board of Education, North Cobb High School or the PTSA.

PAID FOR BY THE CITIZENS FOR A BETTER NORTH COBB

PLAINTIFF'S EXHIBIT 44

PAID FOR BY THE CITIZENS FOR A BETTER NORTH COBB

North Cobb High School Improvement Petition

After a series of information-gathering meetings with parents, teachers, and students, the organization known as **Citizens for a Better North Cobb** has compiled a petition to be distributed throughout the North Cobb community. It focuses on major improvements that are necessary to implement in order to resolve the many problems this school has encountered during the last three years. A few highlights of the petition are listed below:

1. The removal of Dexter Mills as principal.
2. The reinstatement of many veteran teachers and coaches the community supported.

3. Equal treatment given to every parent, teacher and student.

4. The installation of new and moral leadership.

5. The elimination of harassing and intimidating tactics used by the administration toward parents, teachers, and students.

The petition will be on display and distributed to supporters on Monday July 25, 1988 at 7:00 p.m. In the Acworth Beach House. Those wanting to sign and/or assist in the distribution of this document who cannot attend are urged to call: 948-8108 to make arrangements. Donations to support the work of this organization can be sent to: 4451 Seminole Drive, Acworth, GA 30101.

Sponsored by Citizens for a Better North Cobb

Friday July 22, 1988

PLAINTIFF'S EXHIBIT 51

NORTH COBB HIGH SCHOOL IMPROVEMENT MEETING

Due to the sudden and hostile takeover of the group known as Citizens For a Better North Cobb by Daryl Baxter; Co-President of the North Cobb PTSA and clan, the old group which was unincorporated has been forced to change its name to: North Cobb High School Improvement Association.

Any parent, teacher or student that has experienced problems with the school over the past three years is invited to attend.

The next meeting will be on Tuesday, October 25, 1988, at 7:30 P.M. in the Acworth Beach House. For more information contact Dexter Ellerbee at 948-8108.

Paid For By The North Cobb High School
Improvement Association
Dexter Ellerbee Director
We are not affiliated with the
School Board of Education or the PTSA.

10/18/85 MDJ

DEFENDANT'S EXHIBIT 1

[p. 1] Cobb County Board of Education
Dr. Thomas S. Tocco, Superintendent

From: Jerry Ingram, Deputy Superintendent

Date: November 18, 1988

Subject: DEXTER ELLERBEE'S LETTER OF OCTOBER 11, 1988

Mr. Dexter Ellerbee presented to the Board of Education and administration a letter dated October 11, 1988 which stated his concerns related to North Cobb High School. I had a lengthy telephone conversation with Mr. Ellerbee a few days after the Board of Education meeting on October 12, 1988 and requested from Mr. Ellerbee the names of individuals associated with the various concerns. He refused to give me any names and indicated he was

afraid he might be sued. Some of the concerns are those which he has shared with the Board and administration at previous Board meetings.

The concerns submitted in the October 11 letter were expressed by Mr. Ellerbee as item 22 which he submitted on July 28, 1988:

> "Corruption needs to be removed from our school. The reason given at that time to support the above proposal was:"

1. An assistant principal at North Cobb had taken property out of the school for personal use.

   ADMINISTRATION'S RESPONSE:

   The assistant principal was reprimanded and charged a fee for the use of the equipment. Mr. Mills did not have prior knowledge that the assistant principal was going to use the equipment.

2. A football coach assaulted a student last year during school hours and the incident was witnessed by an assistant principal.

   ADMINISTRATION'S RESPONSE:

   Mr. Mills gave the teacher a letter of reprimand dated March 22, 1988 for his inappropriate behavior. Mr. Mills required the teacher to meet with the student and his parents. The teacher apologized to them.

   Mr. Mills took appropriate action in March 1988 regarding this matter. I think the word "assault" is too harsh a term to be used in this incident.

3. Special education students have been misplaced intentionally by the administration.

ADMINISTRATION'S RESPONSE:

I asked Mr. Ellerbee for the names of parents and students who expressed concerns and the name of the administrator he was charging with this action. He refused to give me any names. Mr. Mills said he is unaware of any students who have been misplaced.

[p. 2] 4. The head football coach has won two consecutive years the raffle held by the athletic booster club.

ADMINISTRATION'S RESPONSE:

It is true that the head football coach won $9,000 one year and a new pick-up truck the next year. The booster club sold over 180 tickets at $100 each. The coach purchased 11 tickets. One year the drawing was held in the presence of approximately 200 people at a benefit banquet held in association with the raffle. Other prizes included dinners at various restaurants and concert tickets. The next year the drawing was held at half-time during the spring football game. Mr. Mills has advised the football coach that it would be wise for him not to purchase raffle tickets for the next couple of years because of his past success.

5. The selection of Teacher of the Year is not handled properly and the process is regulated so that the administration has a teacher to win who is in support of the administration.

ADMINISTRATION'S RESPONSE:

Ballots were issued to all teachers. Two administrators did conduct a count of the votes. The assistant principal has retained those ballots.

6. The administration has hired two teachers with highly questionable backgrounds and one of these teachers is said to have had a peculiar relationship with students while teaching in Cherokee County.

ADMINISTRATION'S RESPONSE:

Mr. Ellerbee refused to give me names of teachers or other individuals who shared this concern. He indicated he was afraid he might be sued for slander. However, I had all of the North Cobb female teachers' files pulled and researched. The research revealed that only two had previously taught in Cherokee County and both of them have good recommendations from their previous principals in Cherokee County.

7. Many students have called to indicate sighting of drugs within our school.

ADMINISTRATION'S RESPONSE:

Mr. Ellerbee did not give me any names of students. We conducted a search with a sniff dog in all of the parking lots on November 11, 1988, and no drugs were found. We intend to conduct a search of the lockers. We also plan to conduct searches in three or four other schools as we normally do each year.

[p. 3] 8. Parents are claiming that discrimination is used to award parking spaces and that parking spaces are awarded to band members and cheerleaders first.

ADMINISTRATION'S RESPONSE:

Mr. Mills reported that most first-priority parking spaces are offered to students on the work-study program or who are on minimum day. Second priority goes to seniors. Thirty spaces are reserved for juniors involved in sports, band or cheerleading. These thirty spaces are by random drawing because there are more than thirty people involved in athletics, band and cheerleading. These thirty spaces are the third priority.

9. Large sums of money has been spent on remodeling offices of the administration.

ADMINISTRATION'S RESPONSE:

Mr. Mills reported on the day of our meeting, November 2, 1988, that a total of 20 chairs had been purchased over the past four years for the four guidance offices and six administrative offices. The cost of each chair was $125 for a total of $2,500. All other furniture is the standard furniture issued to other Cobb County schools.

10. PTSA records are misleading.

ADMINISTRATION'S RESPONSE:

Mr. Mills reported that he contacted state officials and was assured that no state or national guidelines had been violated. As I reported to you earlier, I think we need to move from the concept of teachers joining PTSA for their students.

11. The administration has permitted the student council and department heads to circulate petitions during school time to show support for Dexter Mills.

ADMINISTRATION'S RESPONSE:

Mr. Mills stated that he was unaware of the student council circulating petitions and when it was brought to his attention, he stopped the petition. Mr. Mills reported that he had checked with teachers and they had not circulated a petition.

Again, some of these concerns have been shared over and over by Mr. Ellerbee.

JI/ph

Attachment

DEFENDANT'S EXHIBIT 2

Cobb County Public Schools
[SEAL]
47 Waddell St.
Marietta, Georgia 30061

Mr. Ron Galloway
NAME OF REFERENCE

Walton High School
ADDRESS

CITY & STATE

Please return this form directly to:
Cobb County Board of Education
Personnel Division
P.O. Box 1088
Marietta, Georgia 30061
Telephone: (404) 422-9171

Please do not return this form to the applicant. This is confidential information and will not be shared with the applicant.

( ) Elementary
(✓) Middle School
(✓) Special Education-List area of certification

Illegible submitted an application for a position as (✓) Secondary-List area of certification Administration *illegible* Cobb County Public Schools. Would you please check the appropriate columns below and mail this form at your earliest convenience.

Mills	Dexter	Carroll
(Applicant's Last Name)	(First Name)	(Middle Name)

(Maiden Name if Married)

/s/ Dexter Mills
(Signature of Applicant)

4/20/81
(Date)

	NOT OBSERVED	POOR	FAIR	AVERAGE	GOOD	SUPERIOR
Illegible Appearance: Dress, Grooming, *illegible*					✓	
Illegible vitality, Cheerfulness, Endurance					✓	
Illegible Voice, Poise, *illegible*, Enthusiasm, Adaptability				✓		
Illegible Learning					✓	
Illegible Habits: moral influence in *illegible* Community		✓				
Illegible in Major Field						✓
Illegible Teacher Relations: Respect, *illegible* Cooperation				✓		

Illegible with School Officials and *Illegible*		✓
Illegible Total School Program		✓
Illegible Community Life	*Jerry Ingram contacted*	✓
Illegible Neatness and Accuracy *illegible* Reports	*Ron Galloway regarding*	✓
Illegible Stimulation of interest *illegible* of Teaching Skills	*this rating. He said*	✓
Illegible ment and Discipline	*that he thought that*	✓

Illegible absent each year *N/A Mr. Mills became too close in a relationship with a female teacher.*

Illegible opening in your school for a similar position would you employ this person: Yes ___ No ✓

Illegible this person teaching your child?
Yes ✓ No ___

Illegible and for how long have you known this applicant? 3 years at Garret Middle

---

Illegible information, please use back of form.

illegible: /s/ Ronald D. Galloway Position: Principal

5/6/81

The Atlanta Journal and Constitution
Thursday, January 24, 1991

District touting pluses of switch to new high School

Public's last chance to have say is tonight

By Pat Burson
Staff writer

[Picture Omitted in Printing]

Going up: Construction progress on Harrison High School, which is scheduled to open this fall, is surveyed by its principal, Dexter Mills.

Cobb County School Superintendent Kermit Keenum sounded like a car salesman hawking a new model to a roomful of skeptical buyers.

"Look at all of the options," he told a crowd of more than 300 parents and students attending a public forum last week at Pine Mountain Middle School to discuss the administration's latest version of its redistricting plan.

"You're going to be proud to have your child at Harrison High School."

If the Cobb Board of Education approves the two-year redistricting proposal, Harrison will open this fall with about 950 students, not counting additional growth and students in special education. The plan calls for rezoning 177 students from the McEachern High School district and 782 from the North Cobb High School district next year to Harrison, which will have a capacity of 2,350 students.

The community will have its final say tonight at the school board's 7:30 meeting at the school district office in Marietta. Parents and students upset about the proposed changes may make a last-ditch effort to persuade the board to let students attend the school of their choice. The board is expected to take final action on the proposed redistricting plan Feb. 6.

One of Harrison's key selling points, Mr. Keenum said, is that students at the new school at 4500 Due West Road in west Cobb will have a hand in everything from choosing the kinds of courses that will be offered to creating new traditions for years to come, he said.

"The excitement surrounding a new high school is even greater because of the establishment of academic and extracurricular activities," Mr. Keenum said. "They'll be a member of the first band, president of the first BETA club and so on. . . . The opportunities are endless for those who will be in the school the first three years."

If there is a downside, Mr.

Please see REDISTRICT, F6➤

Redistrict: Some want more say

➤ Continued from F1

Keenum said, it is that not all the amenities will be available to those attending Harrison the first year. For instance, most sports will be offered on the ninth-grade and junior varsity levels only. A varsity sports program would not be offered until the 1992-93 school year.

Nor will Harrison be a comprehensive high school, offering a range of on-site vocational classes, according to Principal Dexter Mills. But, he added, arrangements would be made for students desiring those classes to take them at one of the comprehensive high schools, a common practice already.

The disadvantages of going to a new school need not outweigh the advantages, Mr. Mills said from his temporary office at the F.T. Wills Educational Services Center.

"My idea is the good side of it," he said. "The students who *illegible* juniors will be 'seniors' *illegible*

Mr. Mills, former principal at North Cobb High School, is a Harrison cheerleader of sorts and unabashedly enthusiastic about the coming year. "It's just going to be a lot of fun," he said with a smile.

Under school board policy, rising ninth- and tenth-graders will not have the option of choosing to go to the new high school; rising eleventh-graders will be able to choose to go to Harrison or remain at their present school. Harrison will not have a senior class its first year.

Students redistricted to an existing high school – say, from McEachern to Osborne or South Cobb – would have

a one-time option of remaining at their present school or attending the school to which they have been reassigned.

Some students have been upset that they will not have a choice.

"I don't think its fair that ninth-graders going to Osborne and South Cobb have a choice, and the ninth-graders going to *illegible* stands McEachern students' dismay, but is certain those who come to Harrison will adjust and even enjoy being there. "It's hard for students to give up the loyalty to a school they've been going to," he said.

Mr. Keenum said those students rezoned from McEachern and North Cobb to Harrison next year should not feel shortchanged. "I would simply encourage parents to discuss the positives about making a change instead of the difficult parts about making a change," he said "I don't mean for it to be a hard sell. We're very proud of our new schools and about how quickly they become a focal point in the community."

Some parents attending recent public meetings said they're sold on sending their children to Harrison next year.

"As much as we love McEachern, we're looking forward to going to Harrison," said David Vaughn, whose two sons would be rezoned to Harrison.

However, others aren't buying the sales pitch.

Illegible

DEFENDANT'S EXHIBIT 6

NASSP The National Association of Secondary School Principals
1904 Association Drive • Reston, Virginia 22091 •
Tel: 703-860-0200 • Fax: 703-476-5432

March 7, 1990

Mr. Kermit Keenom
Superintendent
Cobb County Public Schools
514 Glover Street
Marietta, GA 30060

Dear Mr. Keenom:

Dexter Mills recently participated in what turned out to be an outstanding project at the National Association of Secondary School Principals (NASSP) annual convention.

He was one of 160 principals and assistant principals who answered questions about schools from people throughout the nation in a telephone hotline sponsored by *USA TODAY*. During the five days of this activity, more than 1,600 calls were received ranging from parents who wanted to know how they could help prepare their students for college, to students who had troubles relating to their peers in schools.

We selected those answering the calls based on their experience and expertise in education, and they performed exceptionally. I'm sure you're very proud of Dexter.

Kind personal regards,

/s/ Dr. Timothy J. Dyer
Dr. Timothy J. Dyer
Executive Director

TJD/mm-
0754n

Serving all Administrators in Middle Level and High School Education

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DEFENDANT's EXHIBIT 7

The National Association of Secondary School Principals
1904 Association Drive • Reston, Virginia 22091 •
Tel: 703-860-0200 • Fax: 703-476-5432

April 3, 1991

Kermit Keenum, Superintendent
Cobb County Public Schools
PO Box 1038
Marietta, GA 30060

Dear Kermit:

During the recent NASSP Convention in Orlando, Florida, we had an unique opportunity to bring about a better public understanding of schools. One of your staff members, Dexter Mills, principal, Harrison High School, greatly assisted us in this endeavor.

Our opportunity was a telephone hotline co-sponsored with *USA TODAY* where a toll-free number was provided so that people throughout the country could ask principals and assistant principals questions about schools and students. Phones were answered for 12 hours each of two days during our meeting.

He was an important contributor to this project. We are very pleased to be able to call upon a person of his

professionalism and I know you are pleased to have him on your staff.

Best wishes for the remainder of this school year, and I hope our paths cross again soon.

Kindest personal regards,

/s/ Tim
Dr. Timothy J. Dyer
Executive Director

TJD/mm
1468n

[p. 1] DEFENDANT'S EXHIBIT 16

July 27, 1988

Dr. Thomas Toco
Superintendent of Schools
514 Glover Street, S.E.
Marietta, Georgia 30060

SUBJECT: I WILL HATE YOU TILL THE DAY I DIE
(Those words will ring in my ears forever)

I think it is wonderful the schools are bringing in speakers to counsel our young people on Suicide. However, I think our educators also need to be a little more educated. If you will read this entire letter you will understand why I feel I must write to you. It is too late for my son but I have a daughter who has three more years in North Cobb High school.

As you can see by the attachment, I have begged for help for my son since he was in elementary school. Needless to say, all my cries fell upon deaf ears. Not only did he *not* get the help he needed, but was put through an ordeal by a teacher at North Cobb High School which no student should have to go through. When my son, Donny, was in the tenth grade the advisor in *Special Education* embarrassed and humiliated him until his life was miserable.

Donny came home and wanted to rent a movie he had seen in school. We let him rent this movie and it turned out to be "R" rated. Donny's father and I felt this movie should have never been shown in a classroom. The teacher claimed this movie belonged to him personally and that it was not intended for classroom use. If this was indeed the case one can only question why this totally innocent teacher had the movie at school in the first place. We do not allow this kind of movies in our home and certainly did not want our children shown this trash at school. This movie was taken from the advisor's desk and shown to the class by a substitute teacher. It was also shown by a substitute in the auto mechanics class, where the teacher brought it to Donny's attention that his mother had caused a problem.

This scenario was discussed in detail with Dexter Mills, the principal at North Cobb, and he remained totally biased throughout our conversation. He had taken the story of the teacher as the gospel and not even bothered to get my son's side of the story. I had my son write his statement as to what happened and I asked Mr. Mills to file this along with the advisor's report. According to my child, he was blamed by the advisor for taking the movie

from his desk and said that Donny would not be punished if he voted for him as teacher of the year (or something he was trying to get). The more I learned about the story, the more upset I became so I called the advisor. I told him that *under no circumstances was Donny to be told that I had called.* I [p. 2] also called the school board after the advisor had such an arrogant attitude. According to my son, *the advisor got up in front of the class and said that they could not see any more movies because of Donny Wilson's Mother.* Donny came home and told me that HE WOULD HATE ME UNTIL THE DAY HE DIED for doing this to him. Those words will ring in my ears forever.

When I asked for Donny to be taken out of this advisor's class, I was told that you could not transfer from one special education teacher to another. Therefore, he had to be taken out of the program altogether, not because of anything he had done but because of something a teacher had done to him. Please keep in mind that we are talking about a child with learning disabilities and emotional problems. In your opinion who was the loser here?

After this, things really took a down-hill swing for Donny. This child was harassed and even threatened by the other students. He was afraid to even go to school. I had my son taken out of this advisor's class but the damage had already been done. I called the school and told them what my son was going through but there was nothing they would do to help. Donny was in the lunch room one day and a child stood up and said "does everyone want to see a P----, well right here is one", and pointed to Donny. When Donny got upset and started to leave the lunch room the monitor told him "get out of

here and do not cause any more trouble". Kids would drive by our house and shout obscenities. Donny became so depressed and said over and over that life was not worth living. When I told him to be careful, he would say that he did not care if he died. Donny would lie in bed for hours and cry. He was asked by the psychologist where we went for help, if he could be one thing what would that be. Donny said he would be "SMART". He said over and over that he was in above his head in his school work; that he was completely lost.

Donny was "Seventeen" years old and in the eleventh grade. On March 10, 1988, he did not come home from his part-time job and would never come home again. He was in a *one-car* accident just two miles from our house and five days later he was pronounced brain dead. While we do not feel that our son committed *intentional* suicide, we know how hard life was for him. You might wonder why I am writing this letter since my child is dead and I will try to tell you. Not only did the school system fail him so pitifully when he was alive, but continued to do so even after his death. When our daughter returned to school to clean out his locker, Donny's personal things had been removed by other students and one child (not even a friend) was actually wearing his clothes. I called the school several times but was unable to recover his favorite shirt and other personal things. You would think that when a child dies, the school would show enough compassion to at least return his personal belongings to his family.

This child lay comatose for five days and we saw only one of his teachers while he was in the hospital. Dexter Mills was kind enough to stick his head around the door

at the funeral home and say he just wanted us to know that he came by. A book was placed in the school library, in our son's memory, by our neighbors and one of them asked that a note be sent to our family to let us know. Over four months have passed and we have not heard a word.

[p. 3] Since we have had so many deaths in the North Cobb School district, I feel there might be other children who may have been through some of the same things as my child. The parents may not even be aware of the unhappiness their child is going through. This is such a critical time for teenagers and MAYBE WE ARE COUNSELLING THE WRONG PEOPLE!!!!

Sincerely,

/s/ Edna W. Wilson
Edna W. Wilson

cc: Dexter Mills
Peggy Elgin – Marietta Journal
Alma Hill – Cobb Extra
John Davidson
Harold Posey
Bill Bates
J. Dale Pass
Bob Shaw
Carolyn Duncan
Bill Raybon

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APPENDIX V

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

DEXTER MILLS, PLAINTIFF	)	
VS:	)	CIVIL ACTION FILE NUMBER 89-103715-18
DEXTER ELLERBEE, DEFENDANT	)	

JUDGMENT

(Filed May 31, 1991)

This action came on for trial before the Court and a jury, Honorable George H. Kreeger presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

IT IS ORDERED AND ADJUDGED that the Plaintiff, Dexter Mills, recover of the Defendant, Dexter Ellerbee, the sum of TWENTY SIX THOUSAND NINE HUNDRED TWENTY DOLLARS ($26,920.00), attorney fees; ONE ($1.00) DOLLAR nominal damages, ONE ($1.00) DOLLAR compensatory damages; TWENTY SIX THOUSAND NINE HUNDRED TWENTY DOLLARS ($26,920.00), punitive damages, with interest thereon at the rate of twelve (12%) per cent, as provided by law, and his costs of action $37.75. Total Amount $53,879.75.

This the 30th day of May, 1991.

/s/ George H. Kreeger
GEORGE H. KREEGER,
JUDGE, SUPERIOR COURT
OF COBB COUNTY

PRESENTED BY:

/s/ Robert D. Ingram
ROBERT D. INGRAM FOR PLAINTIFF

APPENDIX VI

IN THE SUPERIOR COURT FOR THE
COUNTY OF COBB STATE OF GEORGIA

DEXTER MILLS, Plaintiff -vs- DEXTER ELLERBEE, Defendant	CIVIL ACTION FILE NO. 89-1-3715-18

ORDER

(Filed Nov. 7, 1991)

The defendant in the above-styled case has filed Defendant's Motion for Judgment Notwithstanding the Verdict, or In the Alternative, Motion for New Trial, asking the court for an order setting aside the verdict rendered by the jury on May 24, 1991. After considering argument of counsel, citation of authority and a review of the entire record, it is ordered that the defendant's motion shall be and is hereby denied.

SO ORDERED, this 29th day of Oct, 1991.

/s/ George H. Kreeger
George H. Kreeger, Judge
Cobb Superior Court
Cobb Judicial Circuit

Direct Examination of Jerry Ingram,
Superintendent of Schools

[p. 308] BY MR. INGRAM

A. Do you ever recall sitting down with Mr. Mills and discussing his leaving North Cobb High School because of the stress he was under by the allegations that were being made by Mr. Ellerbee?

A. Yes, I do.

Q. And did that eventually lead to Mr. Mills leaving North Cobb High School?

A. I can't say for certain that's the reason he left, because it's a promotion to go to Harrison High School, as far as the prestige of opening a new high school. He'll make less salary because North Cobb was a larger high school, and our salary is based on student population.

Q. Mr. Mills requested he be allowed to leave North Cobb High School?

A. Yes, he did. At that meeting he even asked that – he suggested he thought it would be good for North Cobb High School. He did not want to be a source of problems. He had a good attitude about it. I wasn't anxious for him to leave North Cobb because I thought he was doing an excellent job.

* * *

No. 92-1372

In The

Supreme Court of the United States

October Term, 1992

DEXTER ELLERBEE,

Petitioner,

vs.

DEXTER MILLS,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Georgia

RESPONDENT'S BRIEF IN OPPOSITION

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No. 92-1372

In The

Supreme Court of the United States

October Term, 1992

DEXTER ELLERBEE,

Petitioner,

vs.

DEXTER MILLS,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Georgia

RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

A. Course of the Proceedings Below

As the result of an unfavorable teacher evaluation given to the Petitioner, Dexter Ellerbee (hereinafter referred to as "Petitioner") by the Respondent, Dexter Mills (hereinafter referred to as "Respondent") in 1987, Petitioner began publishing false and

defamatory statements and allegations against the Respondent which injured Respondent in the performance of his trade, office and professional duties as principal of North Cobb High School in Kennesaw, Georgia (Dmg. R. 3-8; Dmg.Tr. 89).[1] After Petitioner ignored demands by the Respondent and his attorney to cease and desist from further publication of such false allegations, Respondent initiated suit against Petitioner for damages arising out of these defamatory statements (Dmg. R. 3-8). Petitioner answered the Complaint admitting he made the statements, but contended they were protected by the First Amendment of the Constitution of the United States and by the Constitution of the State of Georgia (Dmg. R. 9-16).

Although the case was originally filed in January of 1989 in the State Court of Cobb County, it was subsequently transferred to the Cobb County Superior Court. The case came on for trial before a jury on May 20, 1991 and after having duly tried the issues, the jury returned a verdict on May 24, 1991. Initially, the jury returned a verdict in favor of Respondent for zero ($0.00) dollars in nominal damages, zero ($0.00) dollars in compensatory damages, Twenty Six Thousand Nine Hundred and Twenty ($26,920.00) Dollars for punitive damages and Twenty-Six Thousand Nine Hundred and Twenty ($26,920.00) for attorney fees, with costs to be taxed against the Petitioner (Dmg.Tr. 1120). Thereafter, on suggestion by Petitioner's counsel and consent of all parties, the court issued a curative instruction to the jury informing them that if they found the Respondent did not suffer any compensatory or nominal damages, he then could not recover punitive damages (Dmg.Tr. 1120-1126). After receiving this instruction, the jury returned a

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1. As this Court may not be aware, there are two (2) indexes for the two (2) appeals from the original state court Judgment. One index is from the injunction and one is from the damages action. For clarification purposes, Respondent will refer to the record for the injunction as "Inj. R." and for the damages action as "Dmg. R.". Similarly, as there are two (2) transcripts, all references to the trial transcripts will be as "Inj.Tr." for the injunction and "Dmg.Tr." for the trial.

verdict in favor of Respondent for One ($1.00) Dollar in nominal damages, One ($1.00) Dollar in compensatory damages, Twenty Six Thousand Nine Hundred and Twenty ($26,920.00) Dollars for punitive damages and Twenty-Six Thousand Nine Hundred and Twenty ($26,920.00) for attorney fees (Dmg.Tr. 1127). The trial court entered a Judgment on this verdict on May 29, 1991.[2]

In the original Complaint, Respondent requested a Permanent Injunction be entered against Petitioner to prohibit him from further engaging in slanderous conduct against Respondent (Dmg.R. 3-8). On July 1, 1991, the trial court held a hearing on this request and after oral argument was presented by both sides, the trial court granted Respondent a Permanent Injunction barring Petitioner from making certain enumerated statements (Inj.R. 41-58).[3] The Supreme Court of Georgia, however, upon review, found that the Injunction was drawn too broadly to be enforceable and thus, it was overturned (Pet. App. 4).

On or about July 1, 1991, Petitioner filed a Motion for Judgment Notwithstanding the Verdict or, in the Alternative, for a New Trial and same was denied by the Superior Court on November 7, 1991 (Dmg. R. 78-79; *see also*, Pet. App. 106).

The Petitioner appealed the denial of the Motion for Judgment Notwithstanding the Verdict or, in the Alternative, for a New Trial to the Supreme Court of Georgia. After oral argument and careful review of the entire record, the Supreme Court of Georgia entered a decision on November 16, 1992 unanimously affirming the trial court's entry of Judgment in favor of the Respondent as to

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2. *See* Petitioner's ("Pet. App.") at 104 for the Judgment of the Superior Court of Cobb County entered on May 30, 1991.

3. The Superior Court of Cobb County barred the Petitioner from making twenty-seven (27) enumerated statements.

damages, but reversing the injunctive relief (Pet. App. 1-11).[4] In so concluding, the Supreme Court held a public school principal is not a public official for purposes of defamation actions and that under the specific facts of this case, Respondent did not meet the definition of a public figure as set forth in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 344, 94 S. Ct. 2997 (Pet. App. 1-4).

Justice Fletcher specially concurred in the opinion, but stated he felt a public school principal is a public official under defamation law (Pet. App. 5). However, after closely reviewing the record, Justice Fletcher found that the Respondent had presented and that the jury had found, "clear and convincing evidence" that Petitioner had acted with "actual malice" in the making and publication of his false, defamatory statements against the Respondent (Pet. App. 10). Accordingly, Justice Fletcher concurred in the court's affirmation of the Judgment based on the jury's verdict for damages and attorneys' fees.[5]

B. Statement of Facts

Respondent was at all times material to this action, Principal of North Cobb High School (Dmg.Tr. 444). Petitioner is a former school teacher at North Cobb High School who last taught at the school in 1987 (Dmg.Tr. 89, 485-486). Petitioner is presently not an employee of the Cobb County School System and was not an employee of the Cobb County School System during the trial of this case.

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4. The Supreme Court of Georgia ruled the injunction swept more broadly than necessary.

5. As set forth in *Bose Corp. v. Consumer's Union*, 466 U.S. 485, 511, 104 S. Ct. 1949, 80 L. Ed. 2d 502 (1984), Justice Fletcher concluded because of the constitutional requirement of independent appellate review, the Supreme Court may affirm the jury award if Respondent has proved "actual malice" by clear and convincing evidence.

During 1987 while Petitioner was a teacher at North Cobb High School, he received an unfavorable teacher evaluation by Respondent (Dmg.Tr. 474-478). Said evaluation was performed by Respondent in his capacity as Principal of North Cobb High School. *Id.* Respondent subsequently developed an intervention plan for Petitioner in an effort to address certain performance concerns raised in the unfavorable performance evaluation. *Id.* Petitioner refused to perform said intervention plan and eventually requested and received a transfer from North Cobb High School (Dmg.Tr. 89, 485). A few months later Petitioner terminated his employment with Cobb County School System.

After leaving North Cobb High School during the spring of 1988, Petitioner began making allegations against Respondent implicitly or expressly suggesting that Respondent was engaged in unethical, immoral, fraudulent, threatening, harassing, terroristic and other inappropriate actions and conduct in the performance of his duties as Principal and Administrator of North Cobb High School (Dmg.Tr. 48-185). Petitioner used numerous mediums in order to broadcast and publish his allegations against Respondent. *Id.* By his own admission, Petitioner prepared numerous memorandums and letters which he mailed out containing the allegations against Respondent (*see* Respondent's Exhibits 1-10, Dmg.Tr. 55-76). Although all of these documents containing allegations against Respondent were prepared by Petitioner many of the documents were mailed out as if they were generated by teachers, parents, students, or organizations referred to by the Petitioner as "Citizens for a Better North Cobb" and the "North Cobb High School Improvement Association" (Respondent's Exhibits 1-10, Dmg.Tr. 55-76). Petitioner's allegations against Respondent were published in numerous ways including the following:

(1) Mailing documents to Respondent's supervisors and administrators within the Cobb County Public School System (Dmg.Tr. 54, 69, 70, 75, 76, 87);

(2) Mailing the documents to the individual board members on the Cobb County Board of Education (Dmg. Tr. 54, 69, 70, 87);

(3) Mailing the documents to teachers and employees serving under Respondent's supervision at North Cobb High School (Dmg.Tr. 55, 75, 76, 489, 490);

(4) Mailing the documents to colleagues and peers of Respondent (Dmg.Tr. 54, 55, 69, 70, 87, 111);

(5) Mailing the documents to various elected public officials including state legislators and county commissioners (Dmg.Tr. 54, 69, 70, 87, 111, 524);

(6) Mailing the documents to former employees and teachers serving under Respondent's administration (Dmg.Tr. 111);

(7) Mailing the documents to the State Board of Education officials (Dmg.Tr. 86, 111);

(8) Mailing the documents to various state investigators calling for investigations (Dmg.Tr. 86, 87);

(9) Handing out documents to the general public (Dmg.Tr. 82, 90-93);

(10) Stating the allegations to the general public at six (6) public meetings which were advertised and held at a public facility near North Cobb High School (Dmg.Tr. 82-85);

(11) By purchasing eighteen (18) different newspaper advertisements in local newspapers (Dmg.Tr. 83-85, 88, 89, 122);

(12) By putting up signs and billboards along the roadways in the North Cobb High School Community (Dmg.Tr. 86, 120-122);

(13) By setting up a booth at the annual Pioneer Days Festival and Parade held annually within the City of Acworth in order to distribute documents containing the allegations and to converse with passerbys regarding the allegations (Dmg.Tr. 80-81);

(14) By preparing petitions containing the allegations and having the petitions distributed through a door-to-door campaign to residents in the North Cobb Community (Dmg.Tr. 41, 122-124);

(15) Petitioner repeated the allegations before the Cobb County Board of Education in four (4) or five (5) public hearings (Dmg.Tr. 141);

(16) Petitioner also repeated said allegations before the members of the Board of Education on five (5) or six (6) occasions during executive session (Dmg.Tr. 140).

The false allegations the Petitioner published against the Respondent are too numerous to list in this brief, but same are highlighted in Respondent's Exhibits 1-10 (Dmg.Tr. 55-76) and Exhibits 40-51 (Dmg.Tr. 83-85) admitted during the trial of this case. During the trial of this case the Petitioner admitted that he had no personal knowledge as to whether many of the allegations he made were true or false and further admitted conduct demonstrating a callous disregard for whether or not said statements were true or false. Several examples of these types of statements which the Petitioner admitted making during the trial of this case include the following:

1. Petitioner stated in Respondent's Exhibit 5, that "teachers" wanted intervention plans declared null and void, but later admitted no teacher ever gave him such proposal (Dmg.Tr. 162);

2. Petitioner stated in one teacher proposal that teachers wanted "all derogatory information" removed from "their personnel file", but later admitted no teacher ever offered him such a proposal (Dmg.Tr. 65-67, 105-108, 162);

3. Petitioner suggested in his "teacher proposals" that Respondent should be reprimanded for fraudulent actions, but later admitted no one to his knowledge ever accused Respondent of committing fraudulent acts (Dmg.Tr. 43, 59, 105-108, 132, 163);

4. Petitioner stated "threatening tactics were being used by the Mills administration", but later admitted he didn't recall anyone specifically providing this information to him (Dmg.Tr. 163-165);

5. Petitioner states Respondent has done more harm to more people than any other administrator, yet cannot recall anyone who told him this (Dmg.Tr. 168, 169);

6. Petitioner stated "most [intervention] plans were designed for ulterior motives" yet he admitted he does not even know how many intervention or remediation plans have been prepared by the Mills administration (Dmg.Tr. 169, 170). Petitioner later admits he did not really know whether most remediation plans were in fact prepared for ulterior motives as he previously stated (Dmg.Tr. 169-174);

7. Petitioner stated that personnel files in most cases had been added to by the Mills administration for ulterior motives, but later conceded he didn't know whether in fact such statement was true (Dmg.Tr. 175, 176);

8. Petitioner stated Respondent had ruined the lives and careers of many teachers, but later admitted he cannot name a single teacher who told him this (Dmg.Tr. 113-114, 724-728);

9. Petitioner stated the Mills administration was engaged in the practice of awarding money to students for attendance, but later admitted he did not know this to be true and no one ever told him this was going on (Dmg.Tr. 178, 179,184);

10. Petitioner admits stating in his "teacher proposals" that Respondent imposed a "reign of terror" on the teachers at North Cobb High School, but failed to offer any evidence to support this allegation and admits said allegation was not actually proposed by any teacher (Dmg.Tr. 105-108);

11. Petitioner stated that teachers supporting him wanted a written reprimand placed in Mills' personnel file for "fraudulent actions"; but later admitted no one specifically told him this (Dmg.Tr. 43, 59, 132, 163);

12. Petitioner stated that "scholastic abuses" were going on during the Mills administration, but later admitted no one ever told him that (Dmg.Tr. 145);

13. Petitioner stated in his "public proposals" that students were "intentionally" made to feel unwelcome and unimportant by the Mills' administration, but later admitted the words "intentionally made to feel unimportant" were not words given to him by other persons, but were his own words put forward as a public proposal (Dmg.Tr. 147, 148);

14. Petitioner stated in his "public proposals" that students had been "encouraged to quit school" by the Mills administration, but later stated he could not recall the names of any students encouraged to quit (Dmg.Tr. 148-150);

15. Petitioner submitted a public proposal and accusation that under the Mills administration the "practice of receiving graft is prevalent", but later admitted the term "graft" was his term and he could not recall anyone saying that (Dmg.Tr. 152, 154);

16. Petitioner once made the statement that under the Mills administration students were caught fornicating or having sexual intercourse at school and were not punished for it, but later when asked where this information came from, Petitioner could not

recall the name of the individual who provided him with this information (Dmg.Tr. 155-159);

17. Petitioner admits stating in some of his public proposals that "many students have indicated sighting drugs and that drugs typically pass hands. The same students claim substances exchange hands virtually in front of teachers as well as administrators", although Petitioner could not recall the names of any students who called to report this allegation to him (Dmg.Tr. 160-162);

18. One of the Petitioner's public proposals indicated that the Mills administration was harassing and intimidating students by threatening "their grades and activities" (Dmg.Tr. 146-147). However, Petitioner admits he cannot recall the name of a single student who told him of this allegation (Dmg. Tr. 147);

19. Petitioner stated that "many students are favored over others due to affluence. Political clout or money should not influence participation." However, when questioned regarding this allegation against the Respondent, the Petitioner could not provide the name of a single student who was favored because of their affluence or the affluence of their parents (Dmg.Tr. 152-155);

20. Petitioner criticized Respondent for hiring homosexuals at North Cobb High School, but later admitted that he really did not know whether the subject teachers were homosexuals and did not know whether the Respondent had ever heard an alleged rumor that the subject teachers were homosexuals (Dmg.Tr. 159-160);

21. Petitioner stated in one of his public proposals that the Respondent and his administration needed to be moral examples, implying that they were not moral examples (Dmg.Tr. 165-166). However, when Petitioner was asked to give the grounds for his allegation that the Respondent was immoral, he indicated that one

example of his immorality was that "someone told you they heard somebody in the administration office use the word 'damn' on one occasion" (Dmg.Tr. 166-167);

22. Petitioner stated that Respondent "has done more harm to more people than any other administrator" but later admitted that he could not recall anyone ever making this statement to him (Dmg.Tr. 168-169);

During his testimony the Petitioner conceded that part of his motivation for pursuing his crusade against the Respondent was because of the unfavorable performance evaluation he received from the Respondent (Dmg.Tr. 127, 128). Moreover, the Petitioner acknowledged that he wanted to "strike back" at the Respondent (Respondent's Exhibit 2, Dmg.Tr. 59, 129).

The testimony of the numerous witnesses called during the trial of this case including the witnesses called by the Petitioner overwhelmingly established the falsity of the foregoing criticisms and allegations of wrongdoing. Additionally, not only were these statements regarding the Respondent false, but as found by the jury and Judge Fletcher in his concurrence, were made by Petitioner with the knowledge of their falsity or reckless disregard for their truth. (Pet. App. 10).

REASONS FOR DENYING THE WRIT

I.

UNDER THE UNAMBIGUOUS AND UNCONTROVERTED SET OF FACTS PRESENTED IN THIS ACTION, THE SUPREME COURT OF GEORGIA HAS CORRECTLY DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH DOES NOT NEED TO BE REVIEWED BY THIS COURT.

A. Respondent is not a "public official" and need not demonstrate the petitioner's false statements were published with actual malice.

As found by the Cobb County Superior Court and the Georgia Supreme Court, Respondent contends in his capacity as a high school principal, that he is not, and should not be characterized for defamation purposes, as a "public official" within the meaning of this Court's decision in *New York Times v. Sullivan*, 376 U.S. 254 S. Ct. 710 (1964). The Respondent further contends that the set of facts found by the jury to exist and here before the United States Supreme Court, evidence such a willful and wanton disregard by the Petitioner for the truth and defamatory nature of his statements made against the Respondent, that this case is not proper for review. Although there exists a split of authority among appellate courts as to whether a principal should be characterized as a "public official" within the definition set forth in *New York Times*, *supra,* this case does not factually present the proper circumstances upon which this Court should pass final judgment on such a crucial issue. As will be more fully discussed below, the Petitioner's defamatory statements regarding Respondent were found to be made by judge and jury with "actual malice". Therefore, any potential mistake as to Respondent's characterization as a "public official" is moot. Consequently, the decision of the Supreme Court of Georgia should not be disturbed.

The operative test for determining whether or not a defamatory plaintiff is or is not a public official is set forth in *New York Times, supra, Gertz v. Robert Welch, Inc., supra,* and *Rosenblatt v. Baer*, 383 U.S. 75, 86 S. Ct. 669 (1966). A public official is described as one who: (a) holds public office; (b) holds governmental office; *New York Times, supra;* (c) enjoys greater access to channels of effective communication, *i.e.*, electronic and printed media; *Gertz, supra*; (d) has substantial responsibility for or control over the conduct of governmental affairs; *Rosenblatt, supra*; (e) holds position in government with such apparent importance that public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees; *Rosenblatt, supra.*

As noted in the opinion of the Georgia Supreme Court, the United States Supreme Court in *New York Times*, declined "to determine how far down into the lower ranks of government employees the 'public official' designation would extend." (Pet. App. 2). The court further noted the category clearly did not "include all public employees" as set forth in *Hutchinson v. Proxmire*, 443 U.S. 111, 99 S. Ct. 2675 (1979), but rather, that the "public official" designation applied to those persons among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs (Pet. App. 2 quoting *Rosenblatt v. Baer, supra,* at 85, 86). The governance or control which a public school principal might be found to exercise over the conduct of government is at most remote and philosophical so as not to render a principal a public official thereby subjecting such an individual to the rigorous standards in *New York Times* and *Rosenblatt*.[6]

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6. If Respondent had been determined to be a "public official" under the definition set forth in *New York Times*, he would have had to have proven the defamatory statements made by Petitioner were made with "actual malice". (Cont'd)

In essence, the Petitioner asserts in his brief that because Respondent was a public employee and a member of numerous organizations around the state, he must be considered a "public official" for purposes of this action. If the court were to accept this assertion, any public employee who is active in his or her community would be considered a public official.[7] This assertion of Petitioner was not the intent of the Supreme Court in *New York Times* and its progeny.

As the Supreme Court of Georgia noted in its decision, implicit in the reasoning of *New York Times* is the concept that the people should be free to question and criticize only those who "govern" them.[8] In the present dispute, Respondent has no place in the hierarchy of government employees who have control over the conduct of governmental affairs. Respondent does not hold public or governmental office, nor does he enjoy greater access to the channels of effective communication as a result thereof. It is the Respondent's contention, and the view of the Georgia Supreme Court, that a principal simply does not have the relationship with government to warrant "public official" status under *New York*

(Cont'd)

Actual malice has been defined as a statement made "with knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times*, 376 U.S. at 280.

7. In this regard, as previously noted, the United States Supreme Court has held the status of a public official ". . . cannot be thought to include all public employees." *Hutchinson v. Proxmire*, 443 U.S. at 119 n. 8.

8. The court in *McCutcheon v. Moran*, 99 Ill. App. 3rd 421, 425 N. E. 2d 1130, 1133 (1981) held that "the relationship a public school teacher or principal has with the conduct of government is far too remote, in our minds, to justify exposing these individuals to a qualifiedly privileged assault upon his or her reputation."

Times.[9] Therefore, under the standard set forth hereinabove, Respondent was correctly determined not to be a "public official".

For clarification, it is also important to note, the Georgia Supreme Court held without explanation, that Respondent was not a public figure nor limited purpose public figure as defined by *Gertz, supra*.[10]

B. Even in light of the conflicting appellate decisions regarding whether a principal is a public official, this Court should decline to review the judgment of the Georgia Supreme Court as any error in this regard is harmless since the Petitioner's statements were made with "actual malice".

As Petitioner states in his brief, five (5) appellate courts, including the Georgia Supreme Court, have considered the issue of whether a principal is a public official. The Supreme Courts of Vermont and Mississippi and the Maryland Court of Appeals have all held that a principal is a public official, while the Supreme Court of Georgia and the Illinois Court of Appeals in *McCutcheon v. Morgan*, 99 Ill. App. 3rd 421, 425 N.E. 2d 1130 (1981) have held the public school principal is not a public official. As the Petitioner has adequately set forth those five (5) cases and each court's

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9. The opinion of the Georgia Supreme Court states "principals, in general, are removed from the general conduct of the government, and are not policy makers at the level intended by the *New York Times* designation of public official." (Pet. App. 3).

10. Pet. App. 3, 4. Because the Petitioner apparently concedes Respondent is not a public figure or limited purpose public figure under *Gertz*, since he does not argue differently in his brief, Respondent will not unnecessarily argue this point of law before the Court but will simply defer to the judgment of the Georgia Supreme Court and Respondent's previous contentions in the lower courts regarding this issue.

reasoning and additionally because as is discussed below, same is irrelevant to this Court's determination, the Respondent will forego a discussion regarding these appellate decisions.

In the present action, the bottom line is that a proper set of facts and circumstances is not presented upon which the Supreme Court of the United States should decide whether a principal is a "public official" for defamation purposes. Since the court instructed the jury in the original trial of this action that they could only award punitive damages if they found the Petitioner acted with actual malice, the verdict necessarily demonstrates a finding of actual malice on the part of the Petitioner. At the conclusion of the trial the court instructed the jury:

> I charge you that the speech and the statements complained of by the Plaintiff are of a public concern. Therefore, in order for the Plaintiff to be entitled to an award of punitive damages, he must demonstrate that the statements complained of were made with actual malice, as I will define that for you. Reckless disregard of the truth is equivalent to malice. I charge you that a statement is made with actual malice as the term is used in this charge, if it is made with knowledge that is false or with reckless disregard of whether it is false or not. In order to establish recklessness, the Plaintiff must prove that the Defendant had a high degree of awareness of the probable falsity of the statements published. I charge you ladies and gentlemen, that ill will, hatred, or hostility or even spite do not necessarily constitute actual malice as I had described the term to you.

(Dmg.Tr. 1108, 1109).

Inherent in the jury verdict awarding Respondent attorney's fees and punitive damages is the fact that "actual malice" was proven. Accordingly, even if the Respondent were a public official or public figure authorizing a jury charge that the Respondent was only entitled to recover in a defamation action upon a showing that the Petitioner acted with actual malice, the failure to give such a charge was harmless as a matter of law in that the jury necessarily found such malice to exist.

Moreover, Justice Fletcher is his special concurrence to the Supreme Court of Georgia's decision, noted that after careful review of the record, Respondent presented "*clear and convincing*" evidence that Petitioner acted with "actual malice" in making his defamatory statements (Pet. App. 10) (emphasis added). Because such clear and convincing evidence was presented and found to exist by the jury, Justice Fletcher concurred with the affirmation of the jury verdict as to damages (Pet App. 10). Accordingly, the "public official" issue upon which the Petitioner bases his request that this Court review a lower court judgment is moot, since "actual malice" has already been found to exist, by judge and jury, and any potential error regarding the "public official" issue is harmless.

The Respondent does not contend the law is settled regarding whether a principal is a "public official" under *New York Times*, but concedes this issue is in dispute among the appellate courts. However, the instant action does not present the proper set of facts or circumstances upon which this Court should address the issue. Even if Respondent is found to be a public official by this Court, the ultimate outcome is still the same since actual malice was found to exist by both judge and jury. Therefore, the "public official" issue is moot in the case at bar.

II.

PETITIONER'S DEFAMATORY STATEMENTS REGARDING RESPONDENT MADE WITH "ACTUAL MALICE" CLEARLY RESULTED IN ACTUAL DAMAGES TO THE RESPONDENT AND ARE NOT PROTECTED BY THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.[11]

Petitioner contends that sufficient evidence does not exist to support the jury's award of actual damages in the instant action.[12] The Petitioner submits that because Respondent did not seek medical treatment for his alleged injuries and because the Respondent continued in his employment with a higher salary as a principal within the Cobb County School System even after the Petitioner's crusade against him, that the Respondent failed to prove compensatory or nominal damages.

It is important to note the Georgia Court of Appeals has held, "the expression 'actual damages' is not necessarily limited to pecuniary loss, or loss of ability to earn money." *Fugua Television, Inc. v. Flemming*, 134 Ga. App. 731, 734 (1975). The court in *Fugua Television* further stated, "wounding a man's feelings is as much actual damages as breaking his limbs." *Id.*

Further, the Supreme Court of the United States has best set forth Respondent's position regarding actual damages in a defamation case in *Gertz v. Robert Welch, Inc.*, *supra*, when it states:

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11. "Congress shall make no law . . . abridging the freedom of speech or of the press . . ." The Constitution of the United States, Amendment I.

12. The jury returned a verdict of $1 in compensatory damages and $1 in nominal damages.

> [A]ctual injury is not limited to out-of-pocket loss . . . the more customary types of actual harm inflicted by inflammatory falsehood, included impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering . . . there need be no evidence which assigns an actual dollar value to the injury.

Gertz, 418 U.S. at 394, 94 S. Ct. at 3012.

In the case at bar, Respondent testified that he had been personally humiliated, embarrassed and ridiculed as a result of the false allegations published by the Petitioner. The Respondent testified about the strain the Petitioner's crusade imposed upon him as a principal in trying to supervise a school and earn the respect of his students and their parents while the Petitioner was taking out newspaper ads and putting up signs along the roadways suggesting that the Respondent was immoral and unethical (Dmg. R. 525-532). The Respondent also recounted numerous instances where he was ridiculed as a result of the false allegations which the Petitioner was publishing against him. The fact that Respondent continues to be employed in his occupation even after the defamatory remarks and allegations were made, in no way infers that Respondent has failed to suffer actual damages.

Despite the Petitioner's assertions to the contrary, the Respondent most certainly suffered actual damages as a result of the defamatory statements made with actual malice. Unarguably, this type of speech is not protected by the First Amendment.

CONCLUSION

For the above and foregoing reasons, the Court should deny the Petition for a Writ of Certiorari as same does not present a proper set of facts requiring this Court's review.

Dated: March 16, 1992.

Respectfully submitted,

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No. 92-1372

In The

Supreme Court of the United States

October Term, 1992

DEXTER ELLERBEE,
Petitioner,

v.

DEXTER MILLS,
Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of Georgia

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE ATLANTA JOURNAL-CONSTITUTION

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To The Supreme Court Of Georgia

MOTION OF THE ATLANTA JOURNAL-CONSTITUTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Atlanta Journal-Constitution hereby respectfully moves for leave to file the attached brief amicus curiae in this case. The consent of the

attorney for the petitioner has been obtained and his letter of consent has been filed with the Court. The consent of the attorney for the respondent was requested but refused.

The Atlanta Journal-Constitution publishes The Atlanta Journal and The Atlanta Constitution, newspapers of general circulation in the State of Georgia. The Atlanta Journal-Constitution is wholly owned by Cox Enterprises which publishes newspapers in 13 states.

Although the instant case does not involve a media defendant, the judgment and opinion of the Georgia Supreme Court seriously affects media organizations. The Georgia Supreme Court has held that, for the purpose of a defamation action, a public high

school principal is not a "public official" required to prove actual malice before recovering for defamatory statements concerning his official conduct.

This decision raises the specter of more numerous and increasingly costly defamation claims being brought against media organizations that report on educational issues. Yet, public education is increasingly a matter of public interest and concern. The Atlanta Journal-Constitution and other media organizations regularly report on educational issues and considerable libel litigation has already resulted.

The petitioner in this case is a private citizen with interests that are different in substance and scope than the Atlanta Journal-Constitution. As a

media organization with longstanding experience with the impact of defamation law on news reporting, The Atlanta Journal-Constitution can speak with a voice that cannot be duplicated by the petitioner.

Respectfully submitted,

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BRIEF OF THE ATLANTA JOURNAL-CONSTITUTION AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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In The

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To The Supreme Court Of Georgia

BRIEF OF THE ATLANTA JOURNAL-CONSTITUTION AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

Amicus Curiae The Atlanta Journal-Constitution respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Georgia, entered in the above entitled case on November 16, 1992.

INTEREST OF THE AMICUS CURIAE

The Atlanta Journal-Constitution publishes The Atlanta Journal and The Atlanta Constitution, newspapers of general circulation in the State of Georgia. The Atlanta Journal-Constitution is wholly owned by Cox Enterprises which publishes newspapers in 13 states.

Although the instant case does not involve a media defendant, the judgment and opinion of the Georgia Supreme Court seriously affects media organizations. The decision of the Georgia Supreme Court raises the specter of more numerous and increasingly costly defamation claims being brought against media organizations

that report on educational issues.[1] Yet, public education is increasingly a matter of public interest and concern. Because it regularly reports on educational issues, The Atlanta Journal-Constitution has a substantial interest in the outcome of this case.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. THE GEORGIA SUPREME COURT HAS DECIDED AN IMPORTANT QUESTION OF CONSTITUTIONAL LAW IN A MANNER THAT CONFLICTS WITH THE PRECEDENT OF THIS COURT PROTECTING WIDE-OPEN DEBATE ON THE OPERATION OF GOVERNMENT.

The Court has long recognized "a profound national commitment to the principle that debate on public issues

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[1] For examples of libel claims against media defendants stemming from news reporting on educational issues, see cases cited, infra, note 9.

should be uninhibited, robust, and wide-open." New York Times v. Sullivan, 376 U.S. 254, 270 (1964). Speech regarding matters of public importance, particularly commentary on the functioning and management of government, is at the very core of the protection afforded by the First Amendment. The decision of the Georgia Supreme Court in the instant case, holding as a matter of law that a public high school principal is not a "public official" for purposes of a defamation claim based on statements critical of his official conduct, is contrary to the commitment of this Court "to assure the unfettered interchange of ideas for bringing about political and social changes." Id. at 269 (quoting Roth v. United States, 354 U.S. 476, 484 (1957)).

In New York Times, the Court observed that if criticism of government is to be protected, the First Amendment must shield speech critical of those in government. The Court held that a "public official" may not recover for false and defamatory statements critical of his or her official conduct absent actual malice. 376 U.S. at 280. The Court in New York Times declined to specify exactly "how far down into the lower ranks of government employees the 'public official' designation would extend." 376 U.S., at 283, n.23. Since New York Times, however, the Court has twice attempted to define the scope of the "public official" designation in a manner that maintains fidelity to the principle that, at its core, the First

Amendment protects speech critical of government.

In Rosenblatt v. Baer, 383 U.S. 75 (1966), the Court again recognized that "[c]riticism of those responsible for government operations must be free, lest criticism of government itself be penalized." In an attempt to clarify the issue left unresolved in New York Times -- to whom the designation of "public official" should apply -- the Court held that the designation was merited by a broad range of individuals acting in the service of the government, including those serving in both elected and non-elected positions. Id. at 86. The designation was appropriate both for government employees formulating policy and for government employees implementing policy. Id. Furthermore, the Court

emphasized that the designation was warranted even where a government employee had little actual authority, if the employee enjoyed a public perception to the contrary. Id.

> [T]he "public official" designation applies at the very least to those among the hierarchy of governmental officials who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs. . . Where a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees, . . . the New York Times malice standards apply.

Id.

The Court's recognition in Rosenblatt that it is appropriate to base

a "public official" designation on the public's perception of authority is particularly important to journalists. Because of the demanding time constraints involved in news reporting, journalists do not have the luxury to research the actual authority of all newsworthy figures. Decisions have to be made on the authority that an official appears to possess.

In Gertz v. Robert Welch, Inc., 418 U.S. 323, 344 (1974), the Court elaborated on the justifications underlying the designation of "public official" previously explored in Rosenblatt. The Court held that the designation of "public official" is deserved by those who "seek governmental office" because individuals who accept such a position must also "accept certain

necessary consequences of that involvement in public affairs." An official who has accepted a governmental position, the Court reasoned, must likewise accept "the risk of closer public scrutiny than might otherwise be the case." Id.

The judgment and opinion of the Georgia Supreme Court in the instant case is contrary to the decisions of this Court in Gertz and Rosenblatt and incompatible with this Court's commitment to the principle that robust and wide-open debate on the operation of government must be protected.[2] The

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[2] Since Rosenblatt and Gertz, this Court has only revisited the meaning of the "public official" designation in dictum in Hutchinson v. Proxmire, 443 U.S. 111, 119 n.8 (1979). Although the plaintiff's designation was not at issue, the Court observed, "The Court has not provided precise boundaries for the category of 'public official'; it

Georgia Supreme Court held as a matter of law that a high school principal is not a "public official" for the purposes of a defamation suit based on statements made about the principal's official conduct. 262 Ga. at 516. The Georgia Supreme Court concluded that "a principal simply does not have the relationship with government to warrant 'public official' status" and that "[p]rincipals, in general, are removed from the general conduct of government, and are not policymakers at the level intended by the New York Times designation of public official." 262 Ga. at 517.

The Georgia Supreme Court reached this conclusion despite substantial evidence in the record demonstrating the

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cannot be thought to include all public employees, however." Id.

broad authority exercised by respondent and the extensive control over public high schools conferred on all principals under Georgia law. At trial, respondent admitted that he supervised the "instructional program," "public relations program," and "extracurricular program" at North Cobb High School -- an obligation so demanding that he required five assistant principals. Petitioner's Appendix at 17. His duties required his active involvement not only in the day-to-day operation of the school, but also his participation in various booster clubs that funded projects at the school. Id. It was respondent's "responsibility" to evaluate each of the teachers at the school and make hiring and firing decision where appropriate. Petitioner's Appendix at 18. Under Georgia law, as

principal, respondent was accountable for all expenditures,[3] exercised control over the school's buildings and grounds,[4] and was authorized to discipline students and exclude access to visitors as he saw fit.[5]

II. THE GEORGIA SUPREME COURT'S DECISION CONFLICTS WITH THE DECISIONS REACHED BY THE HIGHEST COURTS IN SEVERAL STATES AND WITH THE DECISION OF THE U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

In concluding that a high school principal is not a "public official", the Georgia Supreme Court reached a determination contrary to decisions of the United States Court of Appeals for

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[3] See O.C.G.A. §§ 20-2-960, 20-2-962.

[4] See O.C.G.A, § 20-2-1180.

[5] See O.C.G.A. §§ 20-2-731, 20-2-1180, 20-2-1182.

the Seventh Circuit, the Supreme Courts of Vermont and Mississippi, and the Court of Special Appeals of Maryland.[6] In reaching its decision, the Georgia Supreme Court relied on the reasoning and judgment of an appellate court in Illinois.

In Stevens v. Tillman, 855 F.2d 394 (7th Cir. 1988), cert. denied, 489 U.S. 1065 (1989), the principal of a public elementary school brought a defamation suit against ten members of the school's parental advisory board

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[6] The Georgia Supreme Court was apparently not aware of either the decision of the Seventh Circuit or of the Vermont Supreme Court at the time of its ruling. In the first footnote of the opinion, the Court indicated it understood only two courts had designated a school principal to be a "public official" and cited the decision of the Court of Special Appeals of Maryland and the decision of the Supreme Court of Mississippi.

based on nine separate statements criticizing the school's administration. Id. at 396-97. In affirming the trial court's designation of the plaintiff as a "public official," Judge Easterbrook observed for the Court that "Stevens was a public official -- just like the commissioner who supervised the police in New York Times . . . Stevens was not an elected public official, but as principal she possessed great discretion over the operation of Mollison School. How she used that discretion was the subject of legitimate public debate." Id.

In Palmer v. Bennington School District, 615 A.2d 498 (Vt. 1992), the Vermont Supreme Court held that the principal of a public elementary school was a "public official" for purposes of a defamation suit against his former school

district. The action stemmed from statements by the district's board to the effect that the principal had misappropriated funds and falsified employee time records. Id. at 499-500. In concluding that the principal was a public official, the Vermont Supreme Court noted the holding in Rosenblatt that the designation of a "public official" could rest on either actual authority or the appearance of authority. Id. at 502. The Court concluded that the principal "had power and authority within his school . . . and was in fact and appearance the person in charge of the operation of the school." Id. at 503. Also relying on Rosenblatt, the Vermont Supreme Court rejected as "meritless" the principal's argument that the relatively small size of his elementary school made

his "public official" designation inappropriate. Id.

In Reaves v. Foster, 200 So. 2d 453 (Miss. 1967), the Mississippi Supreme Court upheld the reversal of a judgment in favor of the principal of a public school in his defamation suit against members of a "citizens club" critical of his leadership. In the pamphlet distributed by the defendants, the principal had been described as a "traitor to his race, a stooge, a stool pigeon, an informant, and a betrayer of his people." Id. at 454. The Court held that "a man occupying a prominent position public or quasi-public in nature is subject to grave criticism and malice is not presumed, but must be proven." Id. at 456.

In Kapiloff v. Dunn, 27 Md. App. 514, 343 A.2d 251 (1975), the Court of Special Appeals of Maryland reversed a judgment in favor of the principal of a public high school holding that the principal was a "public official" for the purposes of his defamation suit against the Montgomery County Sentinel. The Sentinel had published an article evaluating principals in Montgomery County based on a rating system that drew on both the reporter's observations and evaluations returned by students and teachers. Dunn received an "unsuited" rating and his administration of the school was criticized in detail in the article. Id. at 518, 343 A.2d at 255-56. The Court of Special Appeals held, "[i]t is plain that as a high school principal . . . Dunn was within the 'public figure-

public official' classification and that his suitability for the position was a matter of public or general interest or concern." Id. at 524, 343 A.2d at 258. The court explicitly relied on "the minimal parameters of the public official classification" announced in Rosenblatt. Id. at 524, 343 A.2d at 258 n.10.

In the instant case, the Georgia Supreme Court cited but rejected Kapiloff v. Dunn and Reaves v. Foster, relying instead on the reasoning of McCutcheon v. Moran, 99 Ill. App. 3d 421, 425 N.E.2d 1130 (1981). In McCutcheon, the Appellate Court of Illinois held that the plaintiff, a public school principal and teacher was not a "public official" for purposes of her defamation claim against a school janitor. The janitor had brought criminal charges against her and

testified against her before the board of education, alleging that the principal had kicked him. Id. at 422, 425 N.E.2d at 1131-32. The Appellate Court read New York Times and Illinois precedent as implying a freedom "to those who are influenced by the operation of government to criticize those who control the conduct of government." But the Court of Appeals considered "[t]he relationship a public school teacher or principal has with the conduct of government [to be] far too remote . . . to justify exposing these individuals to a qualifiedly privileged assault upon his or her reputation." Id. at 424, 425 N.E.2d at 1133.

The Georgia Supreme Court's refusal to recognize that a public school principal constitutes a "public official"

within the meaning of Sullivan is in conflict with authority from other state courts and with the decision of the United States Court of Appeals for the Seventh Circuit. This Court should issue a writ of certiorari to the Georgia Supreme Court to resolve this conflict.

III. THE EXISTENCE OF CONFLICTS AMONG STATE AND FEDERAL COURTS REGARDING THE DESIGNATION OF A SCHOOL PRINCIPAL AS A "PUBLIC FIGURE" IS CONTRARY TO THE COMMITMENT OF THIS COURT TO PREVENT THE CONSTITUTIONAL PROTECTION OF EXPRESSION FROM "VARYING WITH STATE LINES."

In Rosenblatt, this Court rejected the suggestion that the designation of a "public official" should be determined by reference to state law standards. 383 U.S. at 84. The Court rejected this suggestion not only because existing state law standards, which were enacted for administrative purposes, were

unresponsive to the interests at stake in defamation claims, but also because the variation that would result from this approach would undermine the purposes of the First Amendment.

> Our decision in New York Times . . . draws its force from the constitutional protections afforded free expression. The standards that set the scope of its principles cannot therefore be such that "the constitutional limits of free expression in the nation would vary with state lines."

Id. (quoting from Pennekamp v. State of Florida, 328 U.S. 331, 335 (1946)).

Since Rosenblatt and Gertz, this Court has only revisited the meaning of the "public official" designation on one brief occasion -- in a single reference in dictum in Hutchinson v. Proxmire, 443 U.S. 111, 119 n.8 (1979). There the Court observed it had "not provided

precise boundaries for the category of 'public official.'" Id. Because of this absence of "precise boundaries," conflicts have developed among the lower state and federal courts regarding the appropriate designation of a variety of government officials. Conflicts currently exist, for example regarding the designation of police officers,[7]

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[7] Compare, e.g., McCusker v. Valley News, 121 N.H. 258, 428 A.2d 493, cert. denied, 454 U.S. 1017 (1981) (deputy sheriff is not a "public official") with Ammerman v. Hubbard Broadcasting Inc., 91 N.M. 250, 573 P.2d 1258 (App. 1977), cert. denied, 436 U.S.906 (1978) (deputy sheriff is a "public official") and St. Amant v. Thompson, 390 U.S. 727, 730 (1968) (Supreme Court accepted determination of Louisiana Supreme Court that a parish deputy sheriff is a "public official").

undercover informants,[8] and public school teachers.[9]

In the instant case, the Georgia Supreme Court has highlighted the

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[8] Compare Etheridge v. North Mississippi Communications, Inc., 460 F. Supp. 347 (N.D. Miss. 1978) (undercover narcotics agent is "public official") with Jenoff v. Hearst Corp., 644 F.2d 1004, 1006 (4th Cir. 1981) (government informant is not a "public official").

[9] The weight of authority supports the designation of public school teachers as "public officials". Johnston v. Corinthian Television Corp., 583 P.2d 1101 (Okla. 1978); Sewell v. Brookbank, 119 Ariz 422, 581 P.2d 267 (App. 1978); Basarich v. Rodeghero, 24 Ill. App. 3d 889, 321 N.E.2d 7339 (1974). But see Richmond Newspapers v. Lipscomb, 362 S.E.2d 32 (Va. 1987) (public school teacher not a "public official") cert. denied 486 U.S. 1023 (1988); Franklin v. Benevolent & Protective Order of Elks, 97 Cal. App. 3d 315, 159 Cal. Rptr. 131 (1979) (public high school teacher neither "public official" nor "public figure" as a matter of law). The Georgia Supreme Court's decision would move First Amendment law in Georgia down an ironic, and clearly inappropriate, path: teachers may be "public officials" while their employers are not.

variation in the designation of "public officials" that has emerged from the imprecise boundaries set forth in the prior decisions of this Court. Because media organizations increasingly publish news regionally and nationally, publication decisions are often based on the lowest common denominator: the law of the jurisdiction least respectful of modern First Amendment jurisprudence. Inconsistent and unreliable determinations regarding the designation of "public officials" are particularly troubling.

IV. THE SUPREME COURT OF GEORGIA HAS DECIDED AN IMPORTANT QUESTION OF CONSTITUTIONAL LAW IN A MANNER THAT CONFLICTS WITH PRECEDENT OF THIS COURT RECOGNIZING THAT PUBLIC EDUCATION IS A GOVERNMENT FUNCTION OF THE HIGHEST ORDER.

This Court has recognized frequently and eloquently the importance of the public school system in this country. In Ambach v. Norwick, 441 U.S. 68, 75 (1979), the Court observed that,

> The importance of public schools in the preparation of individuals as citizens, and in the preservation of the values on which our society rests, long has been recognized by our decisions: "Today, education is perhaps the most important function of state and local governments . . ."

Id. at 75 (quoting Brown v. Board of Educ., 347 U.S. 483, 493 (1954)). In Ambach, the Court traced the importance

of public schools to the fact that the education provided by these institutions influences "the attitudes of students toward government, the political process, and a citizen's social responsibilities. This influence is crucial to the continued good health of a democracy." Id.

In Wisconsin v. Yoder, 406 U.S. 205, 213 (1972), the Court noted that "[p]roviding public school education ranks at the very apex of the function of a State." The Court also observed that the public school system was not isolated from the protections provided by the First Amendment. "[A] State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests such as

those specifically protected by . . . the First Amendment." Id. at 214; See generally Tinker v. DesMoines Independant Community School District, 393 U.S. 503, 506 (1968) ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.").

The decision of the Georgia Supreme Court is inconsistent with the longstanding commitment of this Court to the principle that education is a government function of the highest order. In refusing to recognize a public high school principal as a "public official" the Georgia Supreme Court concluded that "[p]rincipals are removed from the general conduct of government." This decision stands in stark contrast to the

view of this Court that "education is the most important function of the state." Brown at 493. Review of the Georgia Supreme Court's decision is necessary to establish that the "public official" designation is appropriate for the administrators of the nation's school system because the obligation that these officials have accepted places them at the heart of one of the essential functions of our government. The responsibility these officials have accepted is too important to shield them from criticism that may serve to make public schools more responsive to the educational needs of the country.

V. THE ERROR OF THE GEORGIA SUPREME COURT IN REFUSING TO RECOGNIZE A PUBLIC HIGH SCHOOL PRINCIPAL AS A "PUBLIC OFFICIAL" IS NOT HARMLESS.

In his Brief In Opposition, respondent claims that review of this case is not merited because the jury's award of punitive damages was predicated on an instruction requiring proof of actual malice. Respondent claims that even if this Court determines that a public high school principal is a "public official," the error will be harmless for the purposes of this case. The respondent's argument is flawed as matter of fact and law.

The punitive damages instruction given to the jury in this case contained no requirement that actual malice be proven by "clear and convincing"

evidence.[10] As a result the finding made by the jury is a legally insufficient basis upon which to predicate a libel verdict in favor of a "public official." New York Times, 376 U.S. at 285-86.

Moreover, the Court's instruction to the jury directing that petitioner could be found liable for merely negligent misstatements cannot be redeemed by the mention of actual malice in the context of a subsequent damages instruction. See, e.g., J. Truett Payne Co. v. Chrysler Motors Corp., 451 U.S. 557, 568 (1981) ("Because the court simply bypassed the issue of liability and went directly to the issue of damages, we simply do not have the

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[10] The entire punitive damages instruction is printed at Respondent's Brief In Opposition at 16.

benefit of its views as to whether the respondent in fact violated [the law]"); Cupp v. Naughten, 414 U.S. 141, 147 (1973) ("the question is not whether the trial court failed to isolate and cure a particular ailing instruction; but rather whether the ailing instruction by itself so infected the entire trial that the resulting conviction violates due process.").

Review in this case is important not only because the Georgia Supreme Court's refusal to designate a public high school principal a "public official" prejudiced petitioner in this case, but also because this judgment threatens to chill speech generally. Regardless of the outcome of this specific case on remand, the designation of a public high school principal as a "public official"

is necessary to assure that "breathing room" is afforded to those who comment on the operation of government so that such critics will not be deterred by the threat of suit for unintended, but inevitable, misstatements.

CONCLUSION

For the reasons stated above, amicus curiae The Atlanta Journal-Constitution respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court

of the State of Georgia in the above entitled case.

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